

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NUMBER 1000152568	PAGE 1 OF 17	
2. CONTRACT NO. SPE300-24-D-S771	3. AWARD/EFFECTIVE DATE 2024 APR 17	4. ORDER NUMBER	5. SOLICITATION NUMBER SPE300-22-R-0049	6. SOLICITATION ISSUE DATE 2023 APR 12		
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 19111-5086 USA Local Admin: Colin Kendra DCK0038 Tel: 2157377412 Email: Colin.Kendra@da.mil		CODE SPE300	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB NAICS: 311991 <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) SIZE STANDARD:700			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS Net 10 days		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING	
15. DELIVER TO  SEE SCHEDULE		CODE	16. ADMINISTERED BY  SEE BLOCK 9 City: PAS - None			
17a. CONTRACTOR/ OFFEROR  FRANK M. GARGIULO & SON, INC. 535 SWEETLAND AVE HILLSIDE NJ 07205-1754 USA	CODE 1KZ65	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	
TELEPHONE NO. 8082338222	17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED. <input type="checkbox"/> SEE ADDENDUM			
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) \$37,272,000.00		
<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 checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA			<input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 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 checked="" type="checkbox"/> 29. AWARD OF CONTRACT: REF. SPE30022R0049 OFFER DATED 2023-Nov-03 YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH, HEREIN IS ACCEPTED AS TO ITEMS: See Schedule of Items			
30a. SIGNATURE OF OFFEROR/CONTRACTOR 			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) ALBRIGHT.LEAHL.1284044998 Digitally signed by ALBRIGHT.LEAHL.1284044998 Date: 2024.04.17 13:44:21 -0400			
30c. NAME AND TITLE OF SIGNER (Type or Print) MICHAEL GARGIULO, PALS		30c. DATE SIGNED 4/17/24	31b. NAME OF CONTRACTING OFFICER (Type or Print) Leah Albright		31c. DATE SIGNED 2024 APR 17	

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 (Print)
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
	42b. RECEIVED AT (Location)
	42c. DATE REC'D (YY/MM/DD)
	42d. TOTAL CONTAINERS

**Form****AWARD DOCUMENT****I. SOLICITATION/CONTRACT FORM**

The terms and conditions set forth in the solicitation SPE300-22-R-0049 are incorporated into subject contract.

The following documents are incorporated by reference into the subject contract: your final offer dated November 3, 2023, which is being accepted by the Government to form this contract.

**II. PERFORMANCE PERIOD:****A. Effective Period of the Contract:**

Tier 1: April 17, 2024 - April 18, 2026

Tier 2: April 19, 2026 - October 16, 2027

Tier 3: October 17, 2027 - April 14, 2029

Ordering commences the week of April 28, 2024, for delivery the week of May 5, 2024 for School/Reservation customers.

**ESTIMATED DOLLAR VALUE/GUARANTEED MINIMUM/MAXIMUM**

Upper New York Produce	24 Month Estimate	5 Year Estimate	Guaranteed Minimum	300% Max
Group 3 Eastern Upper New York Schools and Reservations	\$ 4,969,600.00	\$ 12,424,000.00	\$ 248,480.00	\$ 37,272,000.00

**Group 3 - Schools and Reservations (East Upper New York)**

The 10% Guaranteed Minimum (10% of 1 Year Total Estimate) contract dollar value is \$248,480.00 and the 300% Maximum contract dollar value is \$37,272,000.00. The guaranteed minimum and maximum, although based on estimates, are a firm dollar amount calculated as a percentage of the estimated dollar value. The guaranteed minimum constitutes the Government's legal ordering obligation under the contract.

The 24 Month (1<sup>st</sup> Base Tier) Estimate is \$4,969,600.00 and the 5 Year (All Tiers) Estimate is \$12,424,000.00. The term "5 Year Estimate" refers to the Government's good faith estimate of the requirement for all Tier periods.

**III. START-UP PERIOD**

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**Form (CONTINUED)**

The Contractor's startup period will take place prior to the first order and is included in the 24-month Base Tier 1 period. 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 sixty (60) days will be granted for actual implementation. No more than thirty (30) days after award will be permitted for the contractor to have fully functional distribution accounts in place for all customers.

Gargiulo is required to submit the following:

A. Submit Local Purchase Procurement plan by May 20, 2024 which includes the following elements:

1. A list of specific items that the contractor currently purchases locally;
2. A list of local growers from which the contractor sources product;
3. Plans to expand the purchase of local items;
4. A list of resources that might assist in efforts to source more local products.

B. Submit a Food Defense Plan (NOTE: download a copy of the DLA Troop Support Food Defense Checklist go to ([https://www.dla.mil/Portals/104/Documents/TroopSupport/Subsistence/FoodSafety/FoodQuality/food\\_defense\\_check.pdf](https://www.dla.mil/Portals/104/Documents/TroopSupport/Subsistence/FoodSafety/FoodQuality/food_defense_check.pdf)) by June 3, 2024.

C. Submit a Quality Control Management Plan by June 3, 2023.

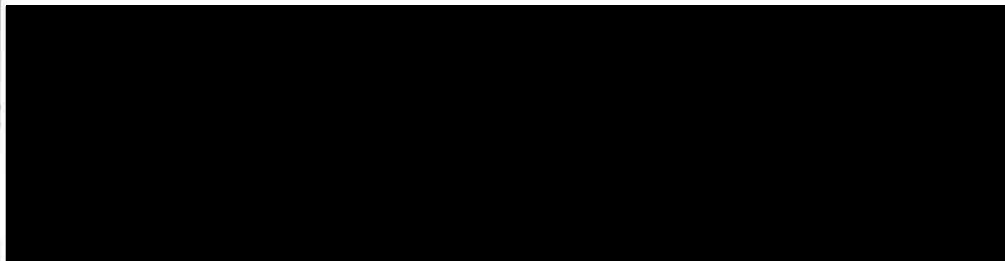
**IV. ORDERING CATALOGS**

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

Offered delivered price to be utilized for first week of ordering. See Attachment 1 for the Pricing Proposal spreadsheet submitted on November 3, 2023.

Distribution prices for the Contract Period are as follows:

Group 3a:



Group 3b:

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Form (CONTINUED)

**V. SUPPLIES OF SERVICES AND PRICES****ITEMS:** Full-Line Fresh Fruit and Vegetables**CUSTOMERS:** Non-DoD School and Reservation customers in the Eastern Upper New York Zones listed in Attachment 2 of this document.**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, for Group 3 (East Upper New York Schools/Reservations), the aggregate of contract Delivered Price increases for each item under this provision during the contract period inclusive of any tier period(s) shall not exceed 100% of the initial delivered price for each contract unit price. The respective percent (%) ceiling for each line item is in effect throughout the entire length of the contract period. To further illustrate this point, Attachment 1 (Final Pricing) includes a separate column that identifies the percentage 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 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 biweekly basis that falls within the EPA clause's 100 percent (%) for USDA School customers ceiling for Group 3, 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.

**CATALOG #:** Non-DoD School Customers in the East Upper New York Zone will order under SPE300-24-D-S771. Non-DoD Reservation Customers in the East Upper New York Zone will order under SPE300-24-D-R771.

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

The DoD Troop is required to place orders no later than 48 hours before delivery date. USDA School/Reservation Customers are required to place orders no later than 96 hours before delivery date.

All pricing will be firm at time of order.

Once submitted through the applicable electronic ordering system (i.e., FFAVORS), an order may be cancelled by a customer up to one (1) day before scheduled delivery via written (e.g., Email) notification to

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**Form (CONTINUED)**

the Contractor and the Contracting Officer. Less than one (1) day from delivery, an order may be cancelled by mutual agreement between the customer and the Contractor. In the event of an act of God, such as extreme weather, the specific situation regarding a cancelled delivery, within less than 1 day, will be dealt with in an equitable manner by the Contracting Officer, who has the ultimate authority and discretion to resolve said issues.

**VI. DELIVERIES AND PERFORMANCE**

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

**Places of Performance:**

- a) Gargiulo, Inc.  
535 Sweetland Ave.  
Hillside, NJ, 07205
- b) Glazier Packing  
5140 State Rt 11  
Malone, NY, 12953.
- c) Daggle Brothers Produce  
40 Stream Dr.  
Florida, NY, 10921

**Clauses****52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders --Commercial Products and Commercial Services.**

As prescribed in 12.301(b)(4), insert the following clause:

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders --Commercial Products and Commercial Services (Jun 2023)**

(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 products and commercial services:

(1) 52.203-19, 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, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

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## Form (CONTINUED)

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801).

(6) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(7) 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 products and commercial services:

[Contracting Officer check as appropriate.]

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jun 2020), with *Alternate 1* (Nov 2021) (41 U.S.C. 4704 and 10 U.S.C. 4655).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509).

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 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 (Jun 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

(5) [Reserved].

(6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

(8) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

(9) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Nov 2021) (31 U.S.C. 6101 note).

(10) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

(11) [Reserved].

(12) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Oct 2022) (15 U.S.C. 657a).

(13) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

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- (14) [Reserved]
- (15)
- (i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2020) ( 15 U.S.C. 644).
- (ii) Alternate I (Mar 2020) of 52.219-6.
- (16)
- (i) 52.219-7, Notice of Partial Small Business Set-Aside (Nov 2020) ( 15 U.S.C. 644).
- (ii) Alternate I (Mar 2020) of 52.219-7.
- (17) 52.219-8, Utilization of Small Business Concerns (Oct 2022) ( 15 U.S.C. 637(d)(2) and (3)).
- (18)
- (i) 52.219-9, Small Business Subcontracting Plan (Oct 2022) ( 15 U.S.C. 637(d)(4)).
- (ii) Alternate I (Nov 2016) of 52.219-9.
- (iii) Alternate II (Nov 2016) of 52.219-9.
- (iv) Alternate III (Jun 2020) of 52.219-9.
- (v) Alternate IV (Sep 2021) of 52.219-9.
- (19)
- (i) 52.219-13, Notice of Set-Aside of Orders (Mar 2020) ( 15 U.S.C. 644(r)).
- (ii) Alternate I (Mar 2020) of 52.219-13.
- (20) 52.219-14, Limitations on Subcontracting (Oct 2022) ( 15 U.S.C. 637s).
- (21) 52.219-16, Liquidated Damages --Subcontracting Plan (Sep 2021) ( 15 U.S.C. 637(d)(4)(F)(i)).
- (22) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2022) ( 15 U.S.C. 657f).
- (23)
- (i) 52.219-28, Post Award Small Business Program Rerepresentation (Mar 2023)( 15 U.S.C. 632(a)(2)).
- (ii) Alternate I (Mar 2020) of 52.219-28.
- (24) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Oct 2022) ( 15 U.S.C. 637(m)).
- (25) 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 (Oct 2022) ( 15 U.S.C. 637(m)).
- (26) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) ( 15 U.S.C. 644(r)).

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CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED: SPE300-24-D-S771	PAGE 9 OF 17 PAGES
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- (27) 52.219-33, Nonmanufacturer Rule (Sep 2021) ( 15 U.S.C. 637(a)(17)).
- (28) 52.222-3, Convict Labor (Jun 2003) (E.O.11755).
- (29) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Dec 2022) (E.O.13126).
- (30) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (31)
  - (i) 52.222-26, Equal Opportunity (Sep 2016) (E.O.11246).
  - (ii) Alternate I (Feb 1999) of 52.222-26.
- (32)
  - (i) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).
  - (ii) Alternate I (Jul 2014) of 52.222-35.
- (33)
  - (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).
  - (ii) Alternate I (Jul 2014) of 52.222-36.
- (34) 52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C. 4212).
- (35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- (36)
  - (i) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 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).
- (37) 52.222-54, Employment Eligibility Verification (May 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)
- (38)
  - (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.)
- (39) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- (40) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air

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## Form (CONTINUED)

Conditioners (Jun 2016) (E.O. 13693).

 (41) (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. (42) (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. (43) 52.223-15, Energy Efficiency in Energy-Consuming Products (May 2020) ( 42 U.S.C. 8259b). (44) (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. (45) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020) (E.O. 13513). (46) 52.223-20, Aerosols (Jun 2016) (E.O. 13693). (47) 52.223-21, Foams (Jun 2016) (E.O. 13693). (48) (i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a). (ii) Alternate I (Jan 2017) of 52.224-3. (49) (i) 52.225-1, Buy American-Supplies (Oct 2022) ( 41 U.S.C. chapter 83). (ii) Alternate I (Oct 2022) of 52.225-1. (50) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (Dec 2022) ( 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 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 [Reserved]. (iii) Alternate II (Dec 2022) of 52.225-3. (iv) Alternate III (Jan 2021) of 52.225-3.

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## Form (CONTINUED)

\_\_\_ (v) Alternate IV (Oct 2022) of 52.225-3.

\_\_\_ (51) 52.225-5, Trade Agreements (Dec 2022) ( 19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X (52) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (53) 52.225-26, 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. Subtitle A, Part V, Subpart G Note).

\_\_\_ (54) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ( 42 U.S.C. 5150).

\_\_\_ (55) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ( 42 U.S.C. 5150).

\_\_\_ (56) 52.229-12, Tax on Certain Foreign Procurements (Feb 2021).

\_\_\_ (57) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (Nov 2021) ( 41 U.S.C. 4505, 10 U.S.C. 3805).

\_\_\_ (58) 52.232-30, Installment Payments for Commercial Products and Commercial Services (Nov 2021) ( 41 U.S.C. 4505, 10 U.S.C. 3805).

X (59) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct2018) ( 31 U.S.C. 3332).

\_\_\_ (60) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ( 31 U.S.C. 3332).

\_\_\_ (61) 52.232-36, Payment by Third Party (May 2014) ( 31 U.S.C. 3332).

\_\_\_ (62) 52.239-1, Privacy or Security Safeguards (Aug 1996) ( 5 U.S.C. 552a).

\_\_\_ (63) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) ( 15 U.S.C. 637(d)(13)).

\_\_\_ (64)

(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

\_\_\_ (iii) Alternate II (Nov 2021) 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 products and commercial services:

[Contracting Officer check as appropriate.]

\_\_\_ (1) 52.222-4, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter67).

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## Form (CONTINUED)

     (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

     (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

     (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

     (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( 41 U.S.C. chapter 67).

     (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ( 41 U.S.C. chapter 67).

     (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

     (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

  X   (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 42 U.S.C. 1792).

(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, as defined in FAR 2.101, on the date of award of this contract, 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.

(c)

(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 (c)(1), in a subcontract for commercial products or commercial services. 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 (Nov 2021) ( 41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan

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**Form (CONTINUED)**

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, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

(vi) 52.219-8, Utilization of Small Business Concerns (Oct 2022) ( 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 the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sep 2015) (E.O.11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).

(xi) 52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C. 4212).

(xii) 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.

(xiii) 52.222-41, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter 67).

(xiv)

(A) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate 1 (Mar 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).

(xv) 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).

(xvi) 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).

(xvii) 52.222-54, Employment Eligibility Verification (May 2022) (E.O. 12989).

(xviii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

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**Form (CONTINUED)**

(A) 52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

(xxi) 52.225-26, 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. Subtitle A, Part V, Subpart G Note).

(xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) ( 31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232-40.

(xxiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 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 products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

*Alternate I* (Feb 2000). As prescribed in 12.301 (b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to "paragraphs (a), (b), (c), or (d) of this clause" in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

*Alternate II* (Jun 2023). As prescribed in 12.301 (b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8 G of the Inspector General Act of 1978 ( 5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to --

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial products or commercial services, other than --

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1)*. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(A) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

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**Form (CONTINUED)**

(C) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(D) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(E) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

(F) 52.219-8, Utilization of Small Business Concerns (Oct 2022) ( 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 the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(G) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(H) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(I) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).

(J) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).

(K) 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.

(L) 52.222-41, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter 67).

(M) \_\_\_ (1) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 22 U.S.C. chapter 78 and E.O. 13627).

\_\_\_ (2) Alternate I (Mar 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).

(N) 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).

(O) 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).

(P) 52.222-54, Employment Eligibility Verification (May 2022) (Executive Order 12989).

(Q) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

(R) 52.222-62, Paid Sick Leave (Under Executive Order 13706 (Jan 2022) (E.O. 13706).

(S) \_\_\_ (1) 52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a).

\_\_\_ (2) Alternate I (Jan 2017) of 52.224-3.

(T) 52.225-26, 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. Subtitle A, Part V, Subpart G Note).

(U) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (Jun 2020) ( 42 U.S.C.

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**Form (CONTINUED)**

1792). Flow down required in accordance with paragraph (c) of FAR clause 52.226-6.

(V) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) ( 31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232-40.

(W) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

Parent topic: 52.212 [Reserved]

(End of clause)

**52.203- 3 Gratuities (Apr 1984)**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative-

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled-

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

**Part 12 Clauses**

**52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014) FAR**

**252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (JAN 2023) DFARS**

**52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (MAR 2023) FAR**

**252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES**

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**Part 12 Clauses (CONTINUED)**

(JAN 2023) DFARS

52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023) FAR

52.204-30 FEDERAL ACQUISITION SUPPLY CHAIN SECURITY ACT ORDERS -- PROHIBITION (DEC 2023) FAR

**Attachments**

**List of Attachments**

Description	File Name
ATTACH_Final_Delivery_Schedule	Gargiulo R0049 Final Delivery Schedule.XLSX
ATTACH_Final_Schedule_of_Items	Gargiulo R0049 Final SOI.xlsx