

ORDER FOR SUPPLIES OR SERVICES

1. CONTRACT/PURCH ORDER/AGREEMENT NO. SPE300-22-A-9443	2. DELIVERY ORDER/CALL NO.	3. DATE OF ORDER/CALL (YYYYMMDD) 2022 AUG 21	4. REQUISITION/PURCH REQUEST NO.	5. PRIORITY
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6. ISSUED BY DLA TROOP SUPPORT DIRECTORATE OF SUBSISTENCE 700 ROBBINS AVENUE PHILADELPHIA PA 19111-5096 USA Local Admin: Robert Cane Tel: 215-737-0658 Email: Robert.Cane@dla.mil	CODE	SPE300	7. ADMINISTERED BY (If other than 6) DLA TROOP SUPPORT DIRECTORATE OF SUBSISTENCE 700 ROBBINS AVENUE PHILADELPHIA PA 19111-5096 USA Criticality: Pre-Award Survey : None	CODE	SPE300	8. DELIVERY FOB <input checked="" type="checkbox"/> DESTINATION <input type="checkbox"/> OTHER <i>(See Schedule if other)</i>
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9. CONTRACTOR NAME AND ADDRESS BOTTLING GROUP, LLC DBA PEPSI BEVERAGES COMPANY 1111 WESTCHESTER AVE WHITE PLAINS NY 10604-3525 USA	CODE	03XL0	FAC LITY	10. DELIVER TO FOB POINT BY (Date) (YYYYMMDD)	11. X IF BUSINESS IS <input type="checkbox"/> SMALL <input type="checkbox"/> SMALL DISADVANTAGED <input type="checkbox"/> WOMEN-OWNED
				12. DISCOUNT TERMS Net 30 days	
13. MAIL INVOICES TO THE ADDRESS IN BLOCK Submit Invoices IAW DFARS 252.232-7003					

14. SHIP TO SEE SCHEDULE, DO NOT SHIP TO ADDRESSES ON THIS PAGE	CODE		15. PAYMENT WILL BE MADE BY DEF FIN AND ACCOUNTING SVC BSM P O BOX 182317 COLUMBUS OH 43218-2317 USA	CODE	SL4701	MARK ALL PACKAGES AND PAPERS WITH IDENTIFICATION NUMBERS IN BLOCKS 1 AND 2.
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16. TYPE OF ORDER	DELIVERY/ CALL	<input checked="" type="checkbox"/>	This delivery order/call is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract.
	PURCHASE	<input type="checkbox"/>	Reference your _____ furnish the following on terms specified herein.
ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.			

NAME OF CONTRACTOR	SIGNATURE	TYPED NAME AND TITLE	DATE SIGNED (YYYYMMDD)
<input type="checkbox"/>	If this box is marked, supplier must sign Acceptance and return the following number of copies:		

17. ACCOUNTING AND APPROPRIATION DATA/LOCAL USE

18. ITEM NO.	19. SCHEDULE OF SUPPLIES/SERVICES	20. QUANTITY ORDERED/ ACCEPTED*	21.UNIT	22. UNIT PRICE	23. AMOUNT
	See Schedule	0.000			

* If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.	24. UNITED STATES OF AMERICA Susan Williams SUSAN.M.WILLIAMS@DLA.MIL 2022 JUL 19	<i>Susan Williams</i> CONTRACTING/ORDERING OFFICER	25. TOTAL \$1.00 26. DIFFERENCES
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27a. QUANTITY IN COLUMN 20 HAS BEEN

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

b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	c. DATE (YYYYMMDD)	d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE			
e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	28. SHIP. NO.	29. D.O. VOUCHER NO.	30. INITIALS		
f. TELEPHONE NUMBER	g. E-MAIL ADDRESS	31. PAYMENT <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		33. AMOUNT VERIFIED CORRECT FOR	
36. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT.		<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. CHECK NUMBER	
a. DATE (YYYYMMDD)	b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		35. BILL OF LADING NO.		
37. RECEIVED AT	38. RECEIVED BY (Print)	39. DATE RECEIVED (YYYYMMDD)	40. TOTAL CONTAINERS	41. S/R ACCOUNT NUMBER	42. S/R VOUCHER NO.

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9. CONTRACTOR NAME AND ADDRESS PEPSICO BEVERAGE SALES, LLC 700 ANDERSON HILL ROAD PURCHASE, NY 10577 USA	CODE	03XL0	AC L Y	10. DELIVER TO FOB POINT BY (Date) (YYYYMMDD)	11. X IF BUSINESS IS <input type="checkbox"/> SMALL <input type="checkbox"/> SMALL D SAD-VANTAGED <input type="checkbox"/> WOMEN-OWNED
				12. DISCOUNT TERMS Net 30 days	
13. MAIL INVOICES TO THE ADDRESS IN BLOCK Submit nvoices AW DFARS 252 232 7003					

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	<input type="checkbox"/> PURCHASE	Reference your _____ urnish the ollowing on terms speci ed herein
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Pepsi Co		Matthew Sammon Key account Manager
NAME O CON RAC OR		YPED NAME AND LE
<input type="checkbox"/> this box is marked, supplier must sign Acceptance and return the ollowing number o copies		DA E S GNED (YYYYMMDD)

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<i>* If quantity accepted by the Government is same as quantity ordered indicate by X If different enter actual quantity accepted below quantity ordered and encircle</i>	24. UNITED STATES OF AMERICA	25. TOTAL	\$ 100
		26. DIFFERENCES	

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b S GNA URE O AU HOR ZED GOVERNMEN REPRESEN A VE	c DA E (YYYYMMDD)	d. PR NTED NAME AND T TLE OF AUTHOR ZED GOVERNMENT REPRESENTAT VE
e MA L NG ADDRESS O AU HOR ZED GOVERNMEN REPRESEN A VE	28. SHIP. NO.	29. D.O. VOUCHER NO.
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CAUTION NOTICE

BLANKET PURCHASE AGREEMENT NUMBER: SPE300-22-A-9443

ITEM: CANNED AND BOTTLED SODA PRODUCTS

- 1. The supplier is required to indicate acceptance of this Blanket Purchase Agreement (BPA) and return one copy as indicated on Page 5-6 of this BPA at paragraph 13.**
- 2. Supplier's attention is directed to Page 2. It is imperative that the requested information in this paragraph be provided when completing this BPA document. In particular, the Government requires the EMAIL ADDRESS/FAX NUMBER FOR ORDER RECEIPT to ensure prompt delivery to military customers. Additionally, POINT(S) OF CONTACT FOR ORDERING and POINT(S) OF CONTACT FOR INVOICING AND PAYMENT will need to be up-to-date.**
- 3. The supplier is also required to complete the applicable representation/certifications at clauses 52.209-11, 52.212-3, 52.215-6 – Place of Performance, 52.204-24, and 252.204-7016.**
- 4. The supplier is also required to review Customer Delivery Information on Page 4-5 of this BPA.**

CONTRACTOR CODE OF BUSINESS ETHICS (OCT 2015)

FAR Part 3.1002(a) requires all government contractors to conduct themselves with the highest degree of integrity and honesty. Contractors should have a written code of business ethics and conduct within thirty days of award. To promote compliance with such code of business ethics and conduct, contractors should have an employee business ethics and compliance training program that facilitates timely discovery and disclosure of improper conduct in connection with government contracts and ensures corrective measures are promptly instituted and carried out. A contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the government, in connection with the award, performance, or closeout of a government contract performed by the contractor or a subcontract awarded there under, credible evidence of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in title 18 of the United States Code or a violation of the False Claims Act. (31 U.S.C. 3729-3733).

If this solicitation or contract includes FAR clause 52.203-13 - CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT; the contractor shall comply with the terms of the clause and have a written code of business ethics and conduct; exercise due diligence to prevent and detect criminal conduct; promote ethical conduct and a commitment to compliance with the law within their organization; and timely report any violations of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in title 18 of the United States Code or any violations of the False Claims Act. (31 U.S.C. 3729-3733). When FAR 52.203-13 is included in the contract, contractors must provide a copy of its written code of business ethics and conduct to the contracting officer upon request by the contracting officer.

RAPID GATE, DEFENSE BIOMETRIC IDENTIFICATION SYSTEM (DBIDS) REQUIREMENT and/or OTHER SECURITY PROGRAMS

Many bases may require enrollment in a particular system for base security such as RapidGate, the Defense Biometric Identification System (DBIDS), or other similar system(s). Such systems manage access to Department of Defense (DoD) installations, and will not allow entry without clearance. During the contract start-up/ implementation period, the Contractor must contact all customer locations to determine whether enrollment in RapidGate, DBIDS, or another security program is required for access to each location. If RapidGate, DBIDS, or other security enrollment is required, the Contractor must take all necessary steps to

obtain this in time for the start of performance under this contract. Failure to have clearance may result in a vendor being turned away from the base and being unable to complete delivery. The Contractor is responsible for any costs associated with RapidGate, DBIDS, and/or other security program enrollment and must ensure that a properly enrolled driver is available for all deliveries. We currently estimate that RapidGate or DDBIDS enrollment will cost about \$250 per company and \$200 per enrolled employee for 1 year of access to multiple locations, but the cost of RapidGate, DBIDS or other security enrollment may vary, so the Contractor should contact the specific security system contractor to determine its own costs. If more than one driver is required, enrollment must be obtained for each driver. Note that enrollment can take several weeks, so an awardee that is not already enrolled must begin enrollment at the time of award notification at the latest. If difficulty or delay in enrollment is encountered during the start-up/implementation period, the Contractor MUST contact the specific security system contractor and/or the Security Officer at the applicable customer locations to resolve any issues with processing enrollment so that the Contractor will be able to deliver as required.

For additional information on current base security systems including RapidGate and DBIDS, including enrollment instructions, please visit their websites at www.rapidgate.com and <http://dbids.dmdc.mil/DBIDS>.

Item Description: Beverage, Carbonated and/or Non-Carbonated, Can or Bottled, Various Flavors, as shown in attached catalog.

StockNumber	ItemDescription	UoM	UPC	Price
895501E116292	TEA, RASPBERRY, SINGLE STRENGTH, SWT,(LIPTON BRISK), 12 OZ CAN, 12/PG, 2 PGS/BOX	BX	12000810152	█
895501E116864	TEA, SINGLE STRENGTH,W/LEMON(LIPTONBRISK),REFRIG PACK,12 OZ CAN,12/PG,2 PGS/BX	BX	317200	█
896001E113733	BEV, CARB, COLA, SWT, (PEPSI), 12 OZ CAN, 24 CANS/BOX	BX	0	█
896001E113734	BEV, CARB, ORANGE-LEMON-LIME, SWT, (MOUNTAIN DEW), 12 OZ CAN, 24 CANS/BOX	BX	0	█
896001E113773	BEV, CARB, COLA, SF, (DIET PEPSI), 12 OZ CAN, 24 CANS/BOX	BX	0	█
896001E115258	BEV, CARB, LEMON-LIME, SWT, (MIST TWST), 12 OZ CAN, 24/BOX	BX	0	█
896001E116882	BEV, CARB, COLA, WILD CHERRY, SWT, (PEPSI),REFRIGPACK,12OZCN,12/PG,2PGS/BX	BX	320200	█
896001E117221	ROOT BEER, SWT, (MUG), REFRIGERATOR PACK, 12 OZ CAN, 12/PG, 2 PGS/BOX	BX	314200	█
896001E117638	BEV, CARB, ORANGE, TWISTER,(TROPICANA), REFRIG PACK, 12 OZ CAN, 12/PG, 2 PGS/BOX	BX	321855	█

POINT(S) OF CONTACT FOR ORDERING:

Joe Maglero, 336-896-5444, Joseph.Maglero.PD@pepsico.com or email orders address: orders@pepsico.com

POINT(S) OF CONTACT FOR INVOICING AND PAYMENT:

Kara Friend email: Kara.Friend@pepsico.com
 Tina Custer email: tina.custer1.contractor@pepsico.com

STORES EMAIL FOR ORDERING: orders@pepsico.com; joseph.maglero.pd@pepsico.com

FAX NUMBER: 336 - 896 - 6089 or 1-888-292 – 9430

A DELIVERY TICKET WILL ACCOMPANY EACH DELIVERY ORDER CITING ORDER NUMBER, UNIT PRICE, BE ITEMIZED, EXTENDED AND TOTALED. PRICES CITED ON DELIVERY TICKET FOR STORES SITES WILL BE PRICES AT THE TIME OF ORDER AND NOT THE PRICES AT TIME OF DELIVERY.

DELIVERIES AND PERFORMANCE:

ALL DELIVERIES EXCLUDE NATIONAL LEGAL HOLIDAYS UNLESS OTHERWISE INDICATED BY ORDERING ACTIVITY.

INSPECTION:

CONTRACTOR'S DELIVERY VEHICLES WILL STOP AND REPORT TO THE INSPECTION POINTS AS DESIGNATED FOR INSPECTION OF PRODUCTS BEFORE PROCEEDING TO ANY OTHER DESIGNATED DELIVERY POINT.

Blanket Purchase Agreement (BPA) Terms and Conditions

1. Description of Agreement

- a. The supplier shall furnish items as set forth in this BPA Document if and when requested by the contracting officer or the authorized representative of the contracting officer during the period commencing on the effective date of this agreement as indicated in **Block 3** of the **DD Form 1155** and ending **FIVE years** from the effective date unless advance written notice of cancellation is received from either party prior to the expiration date.
- b. The supplier shall only provide the products as indicated in this agreement. The product description and/or specifications are provided on page **3 Schedule of Supplies**.
- c. All items delivered shall be produced, processed and prepared in accordance with the highest commercial standard practices, and shall conform to those products the contractor offers for resale in retail outlets, and shall be produced in an approved production facility.

2. Extent of Obligation

The government is obligated only to the extent of authorized purchases actually made under this agreement.

3. Pricing

- a. The supplier warrants that prices set forth in each call are as low as, or lower than; those charged his most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payments.
- b. Prices shall be firm fixed for a twelve-month period.
- c. The supplier is responsible for notifying the Contracting Officer, in writing, 60 days prior to the end of the twelve-month period of any requested price changes. If the supplier does not contact the Contracting Officer with a price change request, the previous year's prices will remain in effect.
- d. All prices are FOB Destination.

4. Purchase Limitation

See paragraph 5 below.

5. Individuals Authorized to Place Orders

- a. The individuals authorized to place orders against this BPA and the dollar limitation per order are as follows:
 - (1) The designated Food Service Ordering Officer(s) at the dining facilities listed in paragraph 10 below. They are limited to **\$3000.00** per order with an order minimum amount of **\$50.00**.
 - (2) The DLA Troop Support Soda Team Contracting Officer(s) and/or Soda Team Contract Specialist(s). They have no restriction per order.
- b. The supplier may only accept orders from individuals identified as being authorized to place orders under this BPA.
- c. All orders must be placed through STORES or other authorized Government purchasing system.

6. Deliveries

- a. All deliveries shall be made as indicated by the BPA order.
- b. Only those products specifically listed in this BPA are authorized for delivery. Delivery of unauthorized products shall be at the risk of and the sole responsibility of the supplier and may result in non-payment as well as cancellation of this agreement.
- c. Partial shipments may not be accepted.

- d. Dining facilities shall return or exchange plastic shipping containers and pallets at the time of delivery.

7. Delivery Tickets

- a. All shipments under this agreement shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:
 - (1) Name of Supplier.
 - (2) 13 Position STORES/ SAP Number. (i.e. SPE300-22-A-XXXX)
 - (3) Four Position Call Number (i.e. 131A)-Last position may be an Alpha or a Numeric figure.
 - (4) Date of Purchase.
 - (5) Itemized List of Supplies Furnished.
 - (6) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided that the invoice is itemized to show this information).
 - (7) Date of Delivery or Shipment.
- b. The customer shall sign a copy of the delivery ticket to signify acceptance of the product. Failure by the vendor to provide a delivery ticket at time of delivery may result in nonpayment.

8. Marking Requirements

Standard commercial markings for individual packages will be used to clearly mark and identify the nature of contents and the expiration date. All markings shall be clear, legible, non-fading and durable.

9. Invoices

Invoicing shall be done via the DLA Troop Support Web Invoicing Tool (RECON TOOL). Manual invoices will not be processed.

10. Delivery Locations

- a. The locations of the facilities placing/receiving orders are as follows:

- (1) a. The location of the Peterson AFB, Schriever AFB and USAF Academy placing/ receiving orders is as follows:

Facility Name:	PETERSON AFB ARAGON DINING FACILITY
Ordering Point:	FT9100
Ship to DoDAAC:	FT9100
Address #1:	440 WEST ENT ST
Address #2:	BLDG #440
City, State & Zip:	PETERSON AFB, CO 80914-1630
POC #1:	Marco Montiel Fernandez marco.montiel_fernandez.1.ni@spaceforce.mil
POC #2:	Daniel Nelson Daniel.nelson.11@spaceforce.mil
POC #3:	Oscar Santiago Oscar.santiago@spaceforce.mil
POC #4:	Tracey Newton tracey.newton@spaceforce.mil
Phone:	719-556-4723

Facility Name:	SCHRIEVER AFB
Ordering Point:	FT9106
Ship to DoDAAC:	FT9106
Address #1:	300 O'MALLEY AVE STE 13
Address #2:	CHARLES DIETZ
Address #3:	BLDG #300

City, State & Zip: COLORADO SPRINGS, CO 80912
POC #1: DOROTHY BADGE
Phone: 719-567-3285
Email: dorothy.badge@spaceforce.mil

Facility Name: USAF ACADEMY
Ordering Point: FT9107
Ship to DoDAAC: FT9107
Address #1: 5218 CEDAR DRIVE STE 100
Address #2: CHARLES DIETZ
Address#3: BLDG #5218
City, State & Zip: USAF ACADEMY, CO 80840-2617
POC #1: MICHAEL HOUSEN
Phone: 719-333-4730
Email: michael.housen.ctr@us.af.mil

Delivery days and times shall be agreed upon by the vendor and the customer. Once agreed upon, a change in the delivery days and times MUST be agreed upon by the vendor and the customer.
Delivery lead time: 48 hours from vendor receipt of order via Electronic Business System (EBS).

11. Acceptance

Government acceptance of product shall be at the customer's delivery location.

12. Additional Ordering Procedures/Requirements

- a. Ordering under this BPA shall be accomplished through the STORES/SAP system only. An electronically transmitted order will be sent via a facsimile from the customer to the supplier. An order/call number will be furnished to the supplier via electronically transmitted facsimile STORES Purchase Orders. The supplier is required to insert the order/call number on the delivery ticket/invoice
- b. Ordering activities shall place orders at least two working days prior to required delivery date.
- c. Authorized personnel shall not order products other than those listed in this BPA.
- d. Individual orders in excess of \$3,000 will be placed by DLA Troop Support authorized personnel.
- e. Bottler will not accept orders placed via telephone or email.

13. Additional Responsibilities of the Supplier

- a. The supplier's/suppliers' authorized official shall indicate acceptance of this BPA by providing the information required at Block 16 on DD Form 1155 of this agreement.
- b. One copy of the completed BPA shall be returned to the Contract Specialist:
(Only emailed copies of this BPA are acceptable and must be sent to Robert.Cane@dla.mil)
- c. **The supplier is required to complete the applicable representation/certifications at clauses:**
 1. 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment);
 2. 252.204-7016 Covered Defense Telecommunications Equipment or Services – Representation ;
 3. 52.209-11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

d. The supplier is responsible to confirm and complete below clauses:

1. 52.212-3 Offeror Representations and Certifications-Commercial Items.
2. 52.215-6 – Place of Performance.

The supplier is responsible for notifying the Contracting Officer, in writing, 60 days prior to the end of the twelve-month period of any price changes. If the supplier does not contact the Contracting Officer with price changes, the previous year prices will remain in effect.

14. Right to Award other Contracts and Orders

The Government reserves the right to award orders to other suppliers for like products during the same performance period as this Blanket Purchase Agreement.

15. North American Industry Classification System (NAICS) Code and Small Business Size Standard

The NAICS code and small business size standard for this acquisition are 312111 and 1000, respectively.

Non-Compete Provision

The offeror warrants that it will not actively promote, encourage, or market any of the customers on this acquisition away from a resultant DLA Troop Support contract and onto a contract of any other Government agency or commercial entity. This prohibition applies both on a pre-award and post-award basis.

Food Defense / Force Protection

DLA Troop Support Subsistence Directorate provides world-wide subsistence logistics support during peace time as well as during regional conflicts, contingency operations, national emergencies, and natural disasters. At any time, the United States Government, its personnel, resources and interests may be the target of enemy aggression to include espionage, sabotage, or terrorism. This increased risk requires DLA Troop Support to take steps to ensure measures are taken to prevent the deliberate tampering and contamination of subsistence items. The offeror must ensure that products and/or packaging have not been tampered with or contaminated throughout the growing, storage, and delivery process. Contract awardee will ensure to complete security of all conveyances to any military installations. The offeror must immediately inform DLA Troop Support Subsistence of any attempt or suspected attempt by any party or parties, known or unknown, to tamper with or contaminate subsistence supplies. As the holder of a contract with the Department of Defense, the awardees should be aware of the vital role they play in supporting our customers. It is incumbent upon the awardees to take all necessary actions to secure product delivered to all military customers, as well as any applicable commercial destinations.

Provisions and Clauses

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (OCT 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) (2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

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

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* (1) 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. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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

(2) Section 889(a)(1)(B) 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, 2020, from entering into a contract or extending or renewing a contract with an entity that uses 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. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

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

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.* The Offeror represents that—

(1) It [] will, [] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It [] does, [] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020) FAR

252.204-7016 COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES—REPRESENTATION (DEC 2019) DFARS

(a) *Definitions.* As used in this provision, “covered defense telecommunications equipment or services” has the meaning provided in the clause [252.204-7018](#), Prohibition on the Acquisition of

Covered Defense Telecommunications Equipment or Services.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov/>) for entities excluded from receiving federal awards for “covered defense telecommunications equipment or services”.

(c) *Representation.* The Offeror represents that it [] does, [] does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(End of provision)

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

As prescribed in 9.104-7(d), insert the following provision:

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

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

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

(b) The Offeror represents that –

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

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

(End of provision)

52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services(November 2021) FAR

The *Offeror shall* complete only paragraph (b) of this provision if the *Offeror* has completed the annual representations and certification electronically in the *System for Award Management (SAM)* accessed through <https://www.sam.gov/>. If the *Offeror* has not completed the annual representations and certifications electronically, the *Offeror shall* complete only paragraphs (c) through (v) of this provision.

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

"Covered telecommunications equipment or services" has the meaning provided in the clause 52.204-25, Prohibition on *Contracting* for Certain Telecommunications and Video Surveillance Services or Equipment.

Economically disadvantaged women-owned small business (EDWOSB) concern means a *small business concern* that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the *United States* and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not *offer* himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

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

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

Inverted domestic corporation, means a foreign incorporated entity that meets the definition of an *inverted domestic corporation* under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

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

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural *Supplies*;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal *Products*, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry *Products*;
- (8) PSC 9610, Ores;
- (9) PSC 9620, Minerals, Natural and Synthetic; and
- (10) PSC 9630, Additive Metal Materials.

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

Predecessor means an entity that is replaced by a *successor* and includes any *predecessors* of the *predecessor*.

Reasonable inquiry has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Restricted business operations means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). *Restricted business operations* do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education;

or

(6) Have been voluntarily suspended. "*Sensitive technology*"—

Sensitive technology—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

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), with a disability that is service connected, as defined in 38 U.S.C. 101(16).

Small business concern—

(1) Means a concern, including its *affiliates*, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this *solicitation*.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a *small business concern* under the size standard applicable to the *acquisition*, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

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

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

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

Subsidiary means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another *subsidiary* of a parent corporation

Successor means an entity that has replaced a *predecessor* by acquiring the assets and carrying out the affairs of the *predecessor* under a new name (often through *acquisition* or merger). The term "*successor*" does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the *successor* for the liabilities of the *predecessor* may vary, depending on State law and specific circumstances.

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

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women

Women-owned small business concern means a *small business concern*—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127), means a *small business concern* that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the *United States*.

(b)

(1) *Annual Representations and Certifications*. Any changes provided by the *Offeror* in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM.

(2) The *offeror* has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the *Offeror* verifies by submission of this *offer* that the representations and certifications currently posted electronically at FAR 52.212-3, *Offeror Representations and Certifications-Commercial Products and Commercial Services*, have been entered or updated in the last 12 months, are current, accurate, complete, and

applicable to this *solicitation* (including the business size standard(s) applicable to the NAICS code(s) referenced for this *solicitation*), at the time this *offer* is submitted and are incorporated in this *offer* by reference (see FAR 4.1201), except for paragraphs _____.

[*Offeror to identify the applicable paragraphs at (c) through (v) of this provision that the offeror has completed for the purposes of this solicitation only, if any.*

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

(c) *Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.*

(1) *Small business concern*. The *offeror* represents as part of its *offer* that it is, is not a *small business concern*.

(2) *Veteran-owned small business concern*. [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The *offeror* represents as part of its *offer* that it is, is not a *veteran-owned small business concern*.

(3) *Service-disabled veteran-owned small business concern*. [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.*] The *offeror* represents as part of its *offer* that it is, is not a *service-disabled veteran-owned small business concern*.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, that it is, is not a small disadvantaged business concern as defined in 13 CFR124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that-

(i) It is, is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) *Economically disadvantaged women-owned small business (EDWOSB) concern.* [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that-

(i) It is, is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

Note: Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that-

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business

Administration, and no material changes in ownership and control, principal office, or *HUBZone* employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It is, is not a *HUBZone* joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each *HUBZone small business concern* participating in the *HUBZone* joint venture. [The *offeror shall* enter the names of each of the *HUBZone small business concerns* participating in the *HUBZone* joint venture: _____.] Each *HUBZone small business concern* participating in the *HUBZone* joint venture *shall* submit a separate signed copy of the *HUBZone* representation.

(d) Representations required to implement provisions of Executive Order 11246-

(1) Previous contracts and compliance. The *offeror* represents that-

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this *solicitation*; and

(ii) It has, has not filed all required compliance reports.

(2) *Affirmative Action Compliance*. The *offeror* represents that-

(i) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 <http://uscode.house.gov/> U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its *offer*, the *offeror* certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the *offeror* with respect to this contract, the *offeror shall* complete and submit, with its *offer*, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The *offeror* need not report regularly employed officers or employees of the *offeror* to whom payments of reasonable compensation were made.

(f) *Buy American Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), *Buy American-Supplies*, is included in this *solicitation*.)

(1)

(i) The *Offeror* certifies that each *end product*, except those listed in paragraph (f)(2) of this provision, is a domestic *end product*.

(ii) The *Offeror shall* list as foreign *end products* those *end products* manufactured in the *United States* that do not qualify as domestic *end products*.

(iii) The terms "*domestic end product*," "*end product*," "*foreign end product*," and "*United States*" are defined in the clause of this *solicitation* entitled "*Buy American-Supplies*."

(2) *Foreign End Products*:

Line Item No. Country of Origin

[List as necessary]

(3) The Government will evaluate *offers* in accordance with the policies and procedures of FAR part 25.

(g)

(1) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate*. (Applies only if the clause at FAR 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act, is included in this *solicitation*.)

(i)

(A) The *Offeror* certifies that each *end product*, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic *end product*.

(B) The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian *end product*," "domestic *end product*," "*end product*," "foreign *end product*," "Free Trade Agreement country," "Free Trade Agreement country *end product*," "Israeli *end product*," and "*United States*" are defined in the clause of this *solicitation* entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

(ii) The *Offeror* certifies that the following *supplies* are Free Trade Agreement country *end products* (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian *end products*) or Israeli *end products* as defined in the clause of this *solicitation* entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

Free Trade Agreement Country *End Products* (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian *End Products*) or Israeli *End Products*:

Line Item No. Country of Origin

[List as necessary]

(iii) The *Offeror shall* list those *supplies* that are foreign *end products* (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this *solicitation* entitled "Buy American-Free Trade Agreements-Israeli Trade Act." The *Offeror shall* list as other foreign *end products* those *end products* manufactured in the *United States* that do not qualify as domestic *end products*.

Other Foreign *End Products*:

Line Item No. Country of Origin

Line Item No. Country of Origin

[List as necessary]

(iv) The Government will evaluate *offers* in accordance with the policies and procedures of FAR part 25.

(2) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate I.* If *Alternate I* to the clause at FAR 52.225-3 is included in this *solicitation*, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The *offeror* certifies that the following *supplies* are Canadian *end products* as defined in the clause of this *solicitation* entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Canadian *End Products*:

Line Item No.

[*List as necessary*]

(3) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate II.* If *Alternate II* to the clause at FAR 52.225-3 is included in this *solicitation*, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The *offeror* certifies that the following *supplies* are Canadian *end products* or Israeli *end products* as defined in the clause of this *solicitation* entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Canadian or Israeli *End Products*:

Line Item No. Country of Origin

Line Item No. Country of Origin

[*List as necessary*]

(4) *Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III.* If *Alternate III* to the clause at 52.225-3 is included in this *solicitation*, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The *offeror* certifies that the following *supplies* are Free Trade Agreement country *end products* (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian *end products*) or Israeli *end products* as defined in the clause of this *solicitation* entitled "Buy American- Free Trade Agreements-Israeli Trade Act":

Free Trade Agreement Country *End Products* (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian *End Products*) or Israeli *End Products*:

Line Item No. Country of Origin

[*List as necessary*]

(5) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this *solicitation*.)

(i) The *offeror* certifies that each *end product*, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country *end product*, as defined in the clause of this *solicitation* entitled "Trade Agreements."

(ii) The *offeror shall* list as other *end products* those *end products* that are not U.S.-made or designated country *end products*.

Other *End Products*:

Line Item No. Country of Origin

Line Item No. Country of Origin

[*List as necessary*]

(iii) The Government will evaluate *offers* in accordance with the policies and procedures of FAR part 25. For *line items* covered by the WTO GPA, the Government will evaluate *offers* of U.S.- made or designated country *end products* without regard to the restrictions of the Buy American statute. The Government will consider for award only *offers* of U.S.-made or designated country *end products* unless the *Contracting Officer* determines that there are no *offers* for such *products* or that the *offers* for such *products* are insufficient to fulfill the requirements of the *solicitation*.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689)*. (Applies only if the contract value is expected to exceed the *simplified acquisition threshold*.) The *offeror* certifies, to the best of its knowledge and belief, that the *offeror* and/or any of its principals—

(1) Are, are not presently debarred, suspended, proposed for *debarment*, or declared *ineligible* for the award of contracts by any *Federal agency*;

(2) Have, have not, within a three-year period preceding this *offer*, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of *offers*; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3) Are, are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4) Have, have not, within a three-year period preceding this *offer*, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

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

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

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

(ii) *Examples.*

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

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

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

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

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]*

(1) *Listed end products.*

Listed End Product Listed Countries of Origin

(2) *Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]*

(i) The *offeror* will not supply any *end product* listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The *offeror may* supply an *end product* listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The *offeror* certifies that it has made a good faith effort to determine whether *forced or indentured child labor* was used to mine, produce, or manufacture any such *end product* furnished under this contract. On the basis of those efforts, the *offeror* certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the *solicitation* is predominantly for the *acquisition of manufactured end products.*) For statistical purposes only, the *offeror shall* indicate whether the *place of manufacture* of the *end products* it expects to provide in response to this *solicitation* is predominantly-

(1) In the *United States* (Check this box if the total anticipated price of offered *end products* manufactured in the *United States* exceeds the total anticipated price of offered *end products* manufactured outside the *United States*); or

(2) Outside the *United States*.

(k) *Certificates regarding exemptions from the application of the Service Contract Labor Standards* (Certification by the *offeror* as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [*The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.*]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The *offeror* does does not certify that—

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

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). The *offeror* does does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the *offeror* (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the *offeror* does not certify to the conditions in paragraph (k)(1) or (k)(2) and the *Contracting Officer* did not attach a Service Contract Labor Standards wage determination to the *solicitation*, the *offeror shall* notify the *Contracting Officer* as soon as possible; and

(ii) The *Contracting Officer may* not make an award to the *offeror* if the *offeror* fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the *Contracting Officer* as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the *offeror* is required to provide this information to the SAM to be eligible for award.)

(1) All *offerors must* submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN *may* be used by the Government to collect and report on any delinquent amounts arising out of the *offeror's* relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder *may* be matched with IRS records to verify the accuracy of the *offeror's* TIN.

(3) *Taxpayer Identification Number (TIN)*.

TIN: _____.

TIN has been applied for. TIN

is not required because:

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

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt); Corporate
entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other _____.

(5) *Common parent*.

Offeror is not owned or controlled by a common parent; Name
and TIN of common parent:

Name _____.

TIN _____.

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

(n) Prohibition on *Contracting with Inverted Domestic Corporations.*

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an *inverted domestic corporation*, or a *subsidiary* of an *inverted domestic corporation*, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(2) *Representation.* The *Offeror* represents that—

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

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

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

(1) The *offeror shall* e-mail questions concerning *sensitive technology* to the Department of State at CISADA106@state.gov.

(2) *Representation and Certifications.* Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its *offer*, the *offeror*—

(i) Represents, to the best of its knowledge and belief, that the *offeror* does not export any *sensitive technology* to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the *offeror*, or any person owned or controlled by the *offeror*, does not engage in any activities for which sanctions *may* be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the *offeror*, and any person owned or controlled by the *offeror*, does not knowingly engage in any transaction that exceeds the threshold at FAR 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or *affiliates*, the property and interests in property of which are blocked pursuant to the International *Emergency Economic Powers Act* (et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

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

(i) This *solicitation* includes a trade agreements certification (e.g., 52.212-3(g)) or a comparable agency provision); and

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

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

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

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

Immediate owner CAGE code: _____.

Immediate owner legal name: _____.

(Do not use a "doing business as" name)

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

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

Highest-level owner CAGE code: _____.

Highest-level owner legal name: _____.

(Do not use a "doing business as" name)

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

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

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

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

(2) The *Offeror* represents that—

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

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

(r) *Predecessor of Offeror.* (Applies in all *solicitations* that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.)

(1) The *Offeror* represents that it is or is not a *successor* to a *predecessor* that held a Federal contract or grant within the last three years.

(2) If the *Offeror* has indicated "is" in paragraph (r)(1) of this provision, enter the following information for all *predecessors* that held a Federal contract or grant within the last three years (if more than one *predecessor*, list in reverse chronological order):

Predecessor CAGE code: (or mark "Unknown").

Predecessor legal name: ____.

(Do not use a "doing business as" name).

(s) [Reserved].

(t) *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals*. Applies in all solicitations that require *offerors* to register in SAM (12.301(d)(1)).

(1) This representation *shall* be completed if the *Offeror* received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the *Offeror* received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) Representation. [*Offeror* to check applicable block(s) in paragraph (t)(2)(i) and (ii)].

(i) The *Offeror* (itself or through its *immediate owner* or *highest-level owner*) does, does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The *Offeror* (itself or through its *immediate owner* or *highest-level owner*) does, does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible website includes the *Offeror's* own website or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the *Offeror* checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the *Offeror shall* provide the publicly accessible website(s) where greenhouse gas

emissions and/or reduction goals are reported:_____.

(u)

(1) In accordance with 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), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (*Classified Information Nondisclosure Agreement*), Form 4414 (*Sensitive Compartmented Information Nondisclosure Agreement*), or any other form issued by a Federal department or agency governing the nondisclosure of *classified information*.

(3) *Representation*. By submission of its *offer*, the *Offeror* represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(v) *Covered Telecommunications Equipment or Services-Representation*. Section 889(a)(1)(A) and section 889 (a)(1)(B) of Public Law 115-232.

(1) The *Offeror shall* review the list of excluded parties in the *System for Award Management (SAM)* (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(2) The *Offeror* represents that—

(i) It does, does not provide covered telecommunications equipment or services as a part of its offered *products* or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(ii) After conducting a *reasonable inquiry* for purposes of this representation, that it does, does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of Provision)

Alternate I (Oct2014). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the *offeror* has represented itself as disadvantaged in paragraph (c)(4) of this provision.)

___ Black American.

___ Hispanic American.

___ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

___ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

___ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

___ Individual/concern, other than one of the preceding.

252.225-7000 – Buy American – Balance of Payments Program Certificate.

Basic. As prescribed in 225.1101 (1) and (1)(i), use the following provision:

**BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—
BASIC (NOV 2014)**

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “foreign end product,” “qualifying country,” “qualifying country end product,” and “United States,” as used in this provision, have the meanings given in the Buy American and Balance of Payments Program-Basic clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American and Balance of Payments Program-Basic clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

<u>Line Item Number</u>		<u>Country of Origin</u>	

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of “domestic end product”:

<u>Line Item Number</u>		<u>Country of Origin (If known)</u>	

(End of Provision)

Alternate I. As prescribed in 225.1101(1)(ii), use the following provision, which adds “South Caucasus/Central and South Asian (SC/CASA) state” and “South Caucasus/Central and South Asian (SC/CASA) state end product” in paragraph (a), and replaces “qualifying country end products” in paragraphs (b)(2) and (c)(2) with “qualifying country end products or SC/CASA state end products”:

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE I (NOV 2014)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “foreign end product,” “qualifying country,” “qualifying country end product,” “South Caucasus/Central and South Asian (SC/CASA) state,” “South Caucasus/Central and South Asian (SC/CASA) state end product,” and “United States,” as used in this provision, have the meanings given in the Buy American and Balance of Payments Program—Alternate I clause of this solicitation.

(b) *Evaluation.* The Government—

- (1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and
- (2) Will evaluate offers of qualifying country end products or SC/CASA state end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

- (1) For all line items subject to the Buy American and Balance of Payments Program—Alternate I clause of this solicitation, the offeror certifies that—
 - (i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and
 - (ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.
- (2) The offeror certifies that the following end products are qualifying country end products or SC/CASA state end products:

<u>Line Item Number</u>		<u>Country of Origin</u>	

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of “domestic end product”:

<u>Line Item Number</u>		<u>Country of Origin (If known)</u>

(End of Provision)

252.225-7012 – Preference for Certain Domestic Commodities (2017) (The Berry Amendment), contained in Defense Federal Acquisition Regulation Supplement (“DFARS”) 252.225-7012 and included in the instant solicitation, is applicable. This regulation mandates that all food items, including milk and dairy items, provided under the instant solicitation and resulting contract be produced and manufactured in the United States.

52.212-4 Contract Terms and Conditions—*Commercial Products and Commercial Services (Nov 2021)*

(a) *Inspection/Acceptance.* The Contractor *shall* only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any *supplies* or services that have been tendered for acceptance. The Government *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 Government *may* seek an equitable price reduction or adequate consideration for acceptance of nonconforming *supplies* or services. The Government *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). 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.

(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, 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 Federal Acquisition Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. 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, 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.*

(11) 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-

- Name and address of the Contractor;
- *Invoice* date and number;
- 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;

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

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

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

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

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

(11) *Electronic funds transfer (EFT)* banking information.

- The Contractor *shall* include EFT banking information on the *invoice* only if required elsewhere in this contract.

- 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, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

- 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) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity*. The Contractor *shall* indemnify the Government 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.-

(3) *Items accepted.* Payment *shall* be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(4) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) and prompt payment regulations at 5 CFR Part 1315.

(5) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(6) *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.

(7) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or *invoice* payment or that the Government 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-

- Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
- Affected contract number and *delivery order* number, if applicable;
- Affected *line item* or *subline item*, if applicable; and
- Contractor point of contact.

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

(6) *Interest.*

(3) 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, 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.

(4) 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 if-

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

(3) 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

(4) The Contractor requests a deferment of collection on a debt previously demanded by the *Contracting Officer* (see 32.607-2).

(iii) 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.

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

- The date fixed under this contract.
- The date of the first written demand for payment, including any demand for payment resulting from a default termination.

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

- The date on which the designated office receives payment from the Contractor;
- 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
- The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vi) The interest charge made under this clause *may* be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(3) *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 Government upon:

- Delivery of the *supplies* to a carrier, if transportation is f.o.b. origin; or
- Delivery of the *supplies* to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

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

(5) *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.

(3) *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*.

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

(5) *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.

(6) *Limitation of liability*. Except as otherwise provided by an express *warranty*, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(7) *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.

(8) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to *procurement* integrity.

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

- The schedule of *supplies*/services.
- The Assignments, Disputes, Payments, *Invoice*, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- The clause at 52.212-5.
- Addenda to this *solicitation* or contract, including any license agreements for *computer software*.
- *Solicitation* provisions if this is a *solicitation*.
- Other paragraphs of this clause.
- The Standard Form 1449.
- Other documents, exhibits, and attachments.
- The specification.

(3)[Reserved]

(4) Unauthorized Obligations.

(d) 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:

- (1) Any such clause is unenforceable against the Government.

(2) 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.

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

(e) 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.

(End of clause)

Alternate I (Nov 2021). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government *may* also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform *inspections* and tests in a manner that will not unduly delay the work.

(iii) If the Government performs *inspection* or tests on the premises of the Contractor or a subcontractor, the Contractor *shall* furnish and *shall* require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(iv) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(v) At any time during contract performance, but not later than 6 months (or such other time as *may* be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government *may* require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction *shall* be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction *shall* be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit *shall* be 10 percent. The Contractor *shall* not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, *shall* disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government *may*-

(10) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(11) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor *shall* be a dispute under the Disputes clause of the contract.

(11) Notwithstanding paragraphs (a)(4) and (5) above, the Government *may* at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to-

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(2) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(3) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as *may* be otherwise specified in the contract.

(4) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property *shall* be governed by the clause pertaining to Government property.

(e) *Definitions.* (1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause-

(3) "Direct materials" means those materials that enter directly into the *end product*, or that are used or consumed directly in connection with the furnishing of the *end product* or service.

(4) "Hourly rate" means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are-

(g) Performed by the contractor;

(h) Performed by the subcontractors; or

(i) Transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control.

(iv) "Materials" means-

- Direct materials, including *supplies* transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control;
- Subcontracts for *supplies* and incidental services for which there is not a labor category specified in the contract;
- Other *direct costs* (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);
- The following subcontracts for services which are specifically excluded from the hourly rate: [Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.]; and

- *Indirect costs* specifically provided for in this clause.

(iv) "Subcontract" means any contract, as defined in FAR subpart 2.1, entered into with a subcontractor to furnish *supplies* or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or *affiliates* of a contractor or subcontractor. It includes, but is not limited to, *purchase orders*, and changes and modifications to *purchase orders*.

(i) *Payments*. (1) *Work performed*. The Government will pay the Contractor as follows upon the submission of commercial *invoices* approved by the *Contracting Officer*:

(2) *Hourly rate*.

(A) The amounts *shall* be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour *shall* be payable on a prorated basis.

(B) The rates *shall* be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the *Contracting Officer*.

(C) *Invoices may* be submitted once each month (or at more frequent intervals, if approved by the *Contracting Officer*) to the *Contracting Officer* or the authorized representative.

(D) When requested by the *Contracting Officer* or the authorized representative, the Contractor *shall* substantiate *invoices* (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(6) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule *shall* not be varied by virtue of the Contractor having performed work on an *overtime* basis.

(i) If no *overtime* rates are provided in the Schedule and the *Contracting Officer* approves *overtime* work in advance, *overtime* rates *shall* be negotiated.

(ii) Failure to agree upon these *overtime* rates *shall* be treated as a dispute under the Disputes clause of this contract.

(iii) If the Schedule provides rates for *overtime*, the premium portion of those rates will be reimbursable only to the extent the *overtime* is approved by the *Contracting Officer*.

(i) *Materials*.

(1) If the Contractor furnishes materials that meet the definition of a *commercial product* at FAR 2.101, the price to be paid for such materials *shall* not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(i) Quantities being acquired; and

(ii) Any modifications necessary because of contract requirements.

(E) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor-

- Has made payments for materials in accordance with the terms and conditions of the agreement or *invoice*; or
- Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or *invoice*.

(ii) To the extent able, the Contractor *shall*-

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, *scrap*, commissions, and other amounts that are identifiable to the contract.

(3) *Other Costs*. Unless listed below, other direct and *indirect costs* will not be reimbursed.

(i) *Other Direct Costs*. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: *[Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."]*

(ii) *Indirect Costs (Material Handling, Subcontract Administration, etc.)*. The Government will reimburse the Contractor for *indirect costs* on a pro-rata basis over the period of contract

performance at the following fixed price:[Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None')."]

(l) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the *Contracting Officer* giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the *Contracting Officer*, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the *Contracting Officer* will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(m) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the *Contracting Officer* notifies the Contractor *in writing* that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(n) *Access to records.* At any time before final payment under this contract, the *Contracting Officer* (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the *Contracting Officer*):

(1) Records that verify that the employees whose time has been included in any *invoice* meet the qualifications for the labor categories specified in the contract;

(2) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment-

(i) The original timecards (paper-based or electronic);

(ii) The Contractor's timekeeping procedures;

(iii) Contractor records that show the distribution of labor between jobs or contracts; and

(iv) Employees whose time has been included in any *invoice* for the purpose of verifying that these employees have worked the hours shown on the *invoices*.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost-

- Any *invoices* or subcontract agreements substantiating material costs; and
- Any documents supporting payment of those *invoices*.

(m) *Overpayments/Underpayments*. Each payment previously made *shall* be subject to reduction to the extent of amounts, on preceding *invoices*, that are found by the *Contracting Officer* not to have been properly payable and *shall* also be subject to reduction for overpayments or to increase for underpayments. The Contractor *shall* promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate *invoice* payment or that the Government has otherwise overpaid on an *invoice* payment, the Contractor *shall*-

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

- Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
- Affected contract number and *delivery order* number, if applicable;
- Affected *line item* or *subline item*, if applicable; and
- Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the *Contracting Officer*. (6)(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, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

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

(p) *Final Decisions*. The *Contracting Officer* will issue a final decision as required by 33.211 if-

- The *Contracting Officer* and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
- 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
- The Contractor requests a deferment of collection on a debt previously demanded by the *Contracting Officer* (see FAR 32.607-2).

(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.

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

(i) The date fixed under this contract.

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

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

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

(ii) 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

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

(iii) The interest charge made under this clause *may* be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(iv) Upon receipt and approval of the *invoice* designated by the Contractor as the "completion *invoice*" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion *invoice*, and supporting documentation, *shall* be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the *Contracting Officer may approve in writing*) from the date of completion.

(r) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, *shall* execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and *claims* arising out of or under this contract, subject only to the following exceptions.

(1) Specified *claims* in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(2) *Claims*, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice *in writing* to the *Contracting Officer* not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) *Claims* for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(3) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(4) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(10) *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 that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(u) 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 an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of

direct labor hours expended before the *effective date of termination* by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that 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 that reasonably could have been avoided.

(v) 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*.

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—*Commercial Products and Commercial Services (May 2022)*

(g) 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).

(4) 52.209-10, Prohibition on *Contracting* with Inverted Domestic Corporations (Nov 2015). (5)

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

(6) 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.*]

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jun 2020), with *Alternate I* (Nov 2021) (41 U.S.C. 4704 and 10 U.S.C. 2402).

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

X (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.)

X (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).

X (8) 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).

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

__(10) [Reserved].

__(11) 52.219-3, Notice of *HUBZone* Set-Aside or Sole-Source Award (Sep 2021) (15 U.S.C. 657a).

X (12) 52.219-4, Notice of Price Evaluation Preference for *HUBZone Small Business Concerns* (Sep 2021) (if the *offeror* elects to waive the preference, it *shall* so indicate in its *offer*) (15 U.S.C. 657a).

__(13) [Reserved]

__(14)

(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.

X (15)(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.

__(16) 52.219-8, Utilization of *Small Business Concerns* (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).

X (17) (i) 52.219-9, Small Business Subcontracting Plan (Nov 2021) (15 U.S.C. 637(d)(4)).

__ (ii) *Alternate I* (Nov 2016) of 52.219-9.

X (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.

__(18)

(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.

__(19) 52.219-14, Limitations on Subcontracting (Sep 2021) (15 U.S.C. 637s).

X (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Sep 2021) (15 U.S.C. 637(d)(4)(F)(i)).

__(21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Sep 2021) (15 U.S.C. 657f).

__(22)

(i) 52.219-28, Post Award Small Business Program Rerepresentation (Sep 2021) (15 U.S.C. 632(a)(2)).

__ (ii) *Alternate I* (Mar 2020) of 52.219-28.

__(23) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged *Women-Owned Small Business Concerns* (Sep 2021) (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 (Sep 2021) (15 U.S.C. 637(m)).

__(25) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) (15 U.S.C. 644(r)).

__(26) 52.219-33, Nonmanufacturer Rule (Sep 2021) (15U.S.C. 637(a)(17)).

X (27) 52.222-3, Convict Labor (Jun 2003) (E.O.11755).

X (28) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2022) (E.O.13126).

X (29) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

X (30)(i) 52.222-26, Equal Opportunity (Sep 2016) (E.O.11246).

__ (ii) *Alternate I* (Feb 1999) of 52.222-26.

X (31)(i) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C. 4212).

X (ii) *Alternate I* (Jul 2014) of 52.222-35.

X (32)(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.

_X (33) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C. 4212).

X (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

X (35)(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).

X (36) 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.)

_(37)

(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.)

_(38) 52.223-11, *Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons* (Jun 2016) (E.O. 13693).

_(39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

_(40)

(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.

_(41)

(i) 52.223-14, *Acquisition* of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

_(ii) *Alternate I* (Jun2014) of 52.223-14.

__ (42) 52.223-15, Energy Efficiency in Energy-Consuming *Products* (May 2020) (42 U.S.C. 8259b).

__ (43)

(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.

X (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020) (E.O. 13513).

__ (45) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

__ (46) 52.223-21, Foams (Jun 2016) (E.O. 13693).

__ (47)

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

__ (ii) *Alternate I* (Jan 2017) of 52.224-3.

X (48) 52.225-1, Buy American-*Supplies* (Nov 2021) (41 U.S.C. chapter 83).

__ (49)(i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (Nov 2021) (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* (Jan 2021) of 52.225-3.

__ (iii) *Alternate II* (Jan 2021) of 52.225-3.

__ (iv) *Alternate III* (Jan 2021) of 52.225-3.

__ (50) 52.225-5, Trade Agreements (Oct 2019) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X (51) 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).

__ (52) 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. 2302Note).

__ (53) 52.226-4, Notice of Disaster or *Emergency Area Set-Aside* (Nov 2007) (42 U.S.C. 5150).

__(54) 52.226-5, Restrictions on Subcontracting Outside Disaster or *Emergency Area* (Nov2007) (42 U.S.C. 5150).

__(55) 52.229-12, Tax on Certain Foreign *Procurements* (Feb 2021).

__(56) 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. 2307(f)).

__(57) 52.232-30, Installment Payments for *Commercial Products* and *Commercial Services* (Nov 2021) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

__X_ (58) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct2018) (31 U.S.C. 3332).

__(59) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).

__(60) 52.232-36, Payment by Third Party (*May 2014*) (31 U.S.C. 3332).

__(61) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

__(62) 52.242-5, Payments to *Small Business Subcontractors* (Jan 2017) (15 U.S.C. 637(d)(13)).

__(63)

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

__(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*) (29U.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).

(12) *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.

- 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.

- 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.

- 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)

(12) 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 products* or *commercial services*. Unless otherwise indicated below, the extent of the flow down *shall* be as required by the clause-

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

- 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)).

- 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).

- 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).

- 52.219-8, Utilization of *Small Business Concerns* (Oct 2018) (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.

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

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

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

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

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

- 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.

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

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(8) 52.222-50, Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O 13627).

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

(xiv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) (41 U.S.C. chapter 67).

- (5) 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).
- (6) 52.222-54, Employment Eligibility Verification (*May 2022*) (E.O. 12989).
- (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).

(9)

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

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

(10) 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. 2302 Note).

(11) 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.

(12) 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 (*May 2022*). 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—

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

(6) 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—

(vii) *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

(viii) *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-

- 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509).
- 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).
- 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).
- 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).
- 52.219-8, Utilization of *Small Business Concerns* (Oct 2018) (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.
- 52.222-21, Prohibition of Segregated Facilities (Apr 2015). (G)

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

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

(6) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C. 793).

(7) 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.

(8) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

(9) ___(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).

(10) 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).

(11) 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).

(12) 52.222-54, Employment Eligibility Verification (*May 2022*) (Executive Order 12989).

(13) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

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

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

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

(5) 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. 2302 Note).

(6) 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.

(7) 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.

(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 (Aug 2019). 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 items, 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 (*Oct 2015*) (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).

(C) 52.204-23, 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).

(D) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (*Aug 2019*) (Section 889(a)(1)(A) of Pub. L. 115-232).

(E) 52.219-8, Utilization of Small Business Concerns (*Oct 2018*) (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.

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

(G) 52.222-26, Equal Opportunity (*Sept 2016*) (E.O. 11246).

(H) 52.222-35, Equal Opportunity for Veterans (*Oct 2015*) (38 U.S.C. 4212).

(I) 52.222-36, Equal Opportunity for Workers with Disabilities (*Jul 2014*) (29 U.S.C. 793).

(J) 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.

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

(L) ___ (1) 52.222-50, Combating Trafficking in Persons (*Jan 2019*) (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).

(M) 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).

(N) 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).

(O) 52.222-54, Employment Eligibility Verification (*Oct 2015*) (Executive Order 12989).

(P) 52.222-55, Minimum Wages Under Executive Order 13658 (*Dec 2015*).

(Q) 52.222-62, Paid Sick Leave Under Executive Order 13706 (*Jan 2017*) (E.O. 13706).

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

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

(S) 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. 2302 Note).

(T) 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.

(U) 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.

DLAD 52.233-9001 Disputes – Agreement to Use Alternative Dispute Resolution (DEC 2016)

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and legal counsel. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this clause, **check here** . Alternate wording may be negotiated with the contracting officer.

(End of Provision)

FAR 52.215-6 - Place of Performance (Oct 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation **intends**, **does not intend** **check applicable block** to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance (Street Address, City, State, County, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other Than Offeror or Respondent

FAR 52.252-2 Clauses Incorporated By Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):
<http://farsite.hill.af.mil/> **OR** www.acquisition.gov

The following additional clauses are incorporated by REFERENCE:

<u>CLAUSE Number</u>	<u>Title</u>	<u>Date</u>
FAR 52.247-34	F.O.B. Destination	NOV 1991
FAR 52.225-1	Buy American Supplies	MAY 2014

FAR 52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):
<https://www.acquisition.gov/> and <http://farsite.hill.af.mil/>

The following additional provisions are incorporated by REFERENCE:

<u>Provision Number</u>	<u>Title</u>	<u>Date</u>
FAR 52.212-2	Evaluation of Commercial Items	OCT 2014
FAR 52.225-25	Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification	AUG 2018
FAR 52.232-17	Interest	MAY 2014
FAR 52.242-13	Bankruptcy	JULY 1995
FAR 52.242-15	Stop-Work Order	AUG 1989
DFARS 252.204-7003	Control of Government Personnel Work Product	APR 1992

DFARS 252.204-7004	Antiterrorism Awareness Training for Contractors	FEB 2019
DFARS 252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism	MAY 2019
DFARS 252.225-7002	Qualifying Countries as Subcontractors	DEC 2017
DLAD 33.103 L06	Agency Protests	DEC 2016
FAR 52.204-7	Systems for Award Management	OCT 2018