

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

1. REQUISITION NUMBER 1000092933	PAGE 1 OF 11
5. SOLICITATION NUMBER SPE300-20-R-0030	6. SOLICITATION ISSUE DATE 2020 SEP 25
b. TELEPHONE NUMBER (No collect calls)	8. OFFER DUE DATE/ LOCAL TIME

2. CONTRACT NO. SPE300-21-D-S747	3. AWARD/EFFECTIVE DATE 2020 DEC 11	4. ORDER NUMBER
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7. FOR SOLICITATION INFORMATION CALL: 

a. NAME

9. ISSUED BY

DLA TROOP SUPPORT
DIRECTORATE OF SUBSISTENCE
700 ROBBINS AVENUE
PHILADELPHIA PA 19111-5096
USA
Local Admin: Jan Luo DJL0002 Tel: DSN444-3424
Email: jan.luo@dla.mil

CODE **SPE300**

10. THIS ACQUISITION IS

UNRESTRICTED OR SET ASIDE: _____ % FOR:

SMALL BUSINESS WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM

HUBZONE SMALL BUSINESS EDWOSB NAICS: 311991

SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS 8 (A) SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED

SEE SCHEDULE

13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION

RFQ IFB RFP

15. DELIVER TO

SEE SCHEDULE

CODE

16. ADMINISTERED BY

SEE BLOCK 9
Criticality: PAS: None

CODE **SPE300**

17a. CONTRACTOR/ OFFEROR

Jo-Ed Produce
309 W 9th St
CHEYENNE WY 82007-1364
USA

CODE **1BY01**

FACILITY CODE

TELEPHONE NO. 3076345885

18a. PAYMENT WILL BE MADE BY

DEF FIN AND ACCOUNTING SVC
BSM
P O BOX 182317
COLUMBUS OH 43218-2317
USA

CODE **SL4701**

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED. SEE ADDENDUM

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

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT (For Govt. Use Only)
\$7,000,000.00

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ARE ARE NOT ATTACHED.

27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA ARE ARE NOT ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED

29. AWARD OF CONTRACT: REF. SPE30020R0030 OFFER DATED 2020-Dec-08 YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS: SEE SCHEDULE OF ITEMS

30a. SIGNATURE OF OFFEROR/CONTRACTOR

Rock Pontillo

31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)
HUGHES.ANTHO
HUGHES ANTHONY.T.12414125
NY.T.1241412586
Date: 2020.12.11 15:30:26 -05'00'

30b. NAME AND TITLE OF SIGNER (Type or Print)

Rock Pontillo

30c. DATE SIGNED

12-11-2020

31b. NAME OF CONTRACTING OFFICER (Type or Print)

31c. DATE SIGNED

2020 DEC 11

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

32a. QUANTITY IN COLUMN 21 HAS BEEN

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

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

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

Form**I. SOLICITATION/CONTRACT FORM**

The terms and conditions set forth in solicitation SPE300-20-R-0030 are incorporated into subject contract.

The following documents are incorporated by reference into the subject contract: your final offer, which is being accepted by the Government to form this contract, Solicitation SPE300-20-R-0030 dated September 25, 2020, and all solicitation amendments issued there under as follows:

Amendment 0001, dated October 21, 2020
Amendment 0002, dated October 22, 2020
Amendment 0003, dated December 2, 2020

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

Base : February 5, 2021 - August 6, 2022
Tier 2: August 7, 2022 - February 3, 2024
Tier 3: February 4, 2024 - August 2, 2025

Ordering commences on February 7, 2021 with first deliveries beginning February 11, 2021 for Southeastern and Some Central Wyoming Schools and all Wyoming Reservation customers.

B. ESTIMATED DOLLAR VALUE/GUARANTEED MINIMUM/MAXIMUM

The following chart includes the 4.5 years estimated dollar value, along with the guaranteed 10% minimum and 250% maximum. The contract maximum, although based on an estimate, is a firm dollar amount calculated as a percentage of the estimated dollar value; the 10% guaranteed minimum, although also based on the estimated dollar value, is a firm dollar amount and constitutes the Government's legal ordering obligation under the contract.

Wyoming Zone	18 – Month Estimate (1st Tier)	4.5 Year Estimate (Total Including all Tiers)	10%Min	250% Max (4.5 Years)
Schools	\$502,510.00	\$1,507,530.00	\$33,500.00	\$5,100,000.00
Reservations	\$182,940.00	\$548,820.00	\$12,200.00	\$1,900,000.00
Total	\$685,450.00	\$2,056,350.00	\$45,700.00	\$7,000,000.00

The term "4.5 Years Estimate" refers to the Government's good faith estimate of the requirement for all three (3) periods (three 18-month tiers).

The total minimum contract dollar value is \$45,700.00
The maximum contract dollar value is \$7,000,000.00

Form (CONTINUED)**III. START-UP PERIOD**

The Contractor's startup period will take place prior to the first order and is included in the 18-month base period. The Contractor shall submit a proposed implementation schedule to the Contracting Officer within fifteen (15) days after award highlighting the steps that will be taken to implement a fully functional distribution account, including all EDI transactions for all customers covered by this solicitation. An additional forty-five (45) days will be granted for actual implementation. No more than sixty (60) days after award will be permitted for each contractor to have fully functional distribution accounts in place for all customers.

JO-ED Produce Inc. is required to submit the following:

- A. Submit a valid date for a USDA GAP/GHP audit for the place of performance by February 5, 2021. The USDA GAP/GHP audit report/certificate must address the following parts: General, Wholesale Distribution (6) and Preventive Food Defense (7).
- B. Submit a Food Defense Plan by January 25, 2021. (NOTE: download a copy of the DLA Troop Support Food Defense Checklist, go to: http://www.dla.mil/Portals/104/Documents/TroopSupport/Subsistence/FoodSafety/FoodQuality/food_defense_check14MAR18.pdf)
- C. Submit a Quality Control Management Plan by January 25, 2021.

IV. ORDERING CATALOGS

The following are part of JO-ED Produce Inc.'s offer and are hereby incorporated as part of subject contract:

Offered delivered price to be utilized for first week of ordering. The Pricing Proposal spreadsheet submitted on December 8, 2020 is attached (Attachment 1).

Distribution prices for the Contract Period are as follows:

Distribution Prices	Tier 1	Tier 2	Tier 3
Group 1 (Southeastern and Some Central Wyoming Schools and All Wyoming Reservations)	\$5.00	\$5.00	\$5.00

SUPPLIES OF SERVICES AND PRICES

ITEMS: Full-Line Fresh Fruit and Vegetables

CURRENT CUSTOMERS: Non-DoD USDA Customers in the Southeastern and Some Central Schools and All Reservation in the State of Wyoming listed in Attachment 2 of this document.

FOB TERMS: FOB Destination for all items.

NOTE: Paragraph (d) of the Economic Price Adjustment provision contained in the Solicitation enforces an upward ceiling on any economic price adjustments applicable to the instant Contract. Specifically, the aggregate of contract Delivered Price increases for each line item on the catalog subject to this provision shall not exceed 70% for USDA Schools and 90% for Reservations above that line item's initial Delivered Price on the awarded catalog. The respective

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Form (CONTINUED)

percent (%) ceiling for each line item is in effect throughout the entire length of the contract period. To further illustrate this point, Attachment 1 (Final Pricing) includes a separate column that identifies the percentage EPA ceiling for the individual Delivered Prices of each line item on the catalog. This price represents the maximum increase in Delivered Price allowable for the entire 4.5-year length of the Contract. For additional information, see the EPA provision as specified in the Solicitation. That said, please be aware that just because an awardee furnishes a price revision on a bi-weekly basis that falls within the EPA clause's ceiling of 70% for USDA Schools and 90% for Reservations, does not automatically deem that price "fair and reasonable" and thus acceptable. The EPA provision is merely one separate factor that is considered by the Contracting Officer in arriving at his/her final "fair and reasonable" price determinations. Therefore, it is important to note that all other provisions of the Solicitation/Contract must be adhered to in conjunction with the aforementioned EPA provision.

CATALOG #: Non-DoD USDA Southeastern and Some Central of Wyoming Schools customers will order under SPE300-21-D-S747 and All Wyoming Reservations customers will order under SPE300-21-D-R747. JO-ED Produce Inc. will invoice in accordance with the customer's orders.

All catalog pricing is valid from Sunday thru the following Saturday (2 weeks). Catalog updates must be received no later than 12:00 P.M. EST the preceding Wednesday.

The School Customers are required to place orders with a 4-day lead time.

All pricing will be firm at time of order.

DELIVERIES AND PERFORMANCE

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

Places of Performance:

JO-ED Produce Inc.
309 West 9th Street
Cheyenne, WY 82007

Form (CONTINUED)**Part 12 Clauses****52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (NOV 2020) FAR**

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

- (1) 52.203-19, 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 (JUL 2018) (Section 1634 of Pub. L. 115-91).
- (3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (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 items: [Contracting Officer check as appropriate.]

- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (OCT 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).
- (2) 52.203-13, Contractor Code of Business Ethics and Conduct (JUN 2020) (41 U.S.C. 3509).
- (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)
- (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).
- (5) [Reserved]
- (6) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).
- (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).
- (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (JUN 2020) (31 U.S.C. 6101 note).
- (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) (41 U.S.C. 2313).
- (10) [Reserved]
- (11)(i) 52.219-3, Notice of HUBZone Set-Aside or Sole Source Award (MAR 2020) (15 U.S.C. 657a).
- (ii) Alternate I (MAR 2020) of 52.219-3.
- (12)(i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (MAR 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- (ii) Alternate I (MAR 2020) of 52.219-4.
- (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.
- (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)).
- (17)(i) 52.219-9, Small Business Subcontracting Plan (JUN 2020) (15 U.S.C. 637(d)(4)).
- (ii) Alternate I (NOV 2016) of 52.219-9.
- (iii) Alternate II (NOV 2016) of 52.219-9.
- (iv) Alternate III (JUN 2020) of 52.219-9.

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Part 12 Clauses (CONTINUED)

(v) Alternate IV (JUN 2020) 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.

X (19) 52.219-14, Limitations on Subcontracting (MAR 2020) (15 U.S.C. 637(a)(14)).

(20) 52.219-16, Liquidated Damages --Subcontracting Plan (JAN 1999) (15 U.S.C. 637(d)(4)(F)(i)).

(21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (MAR 2020) (15 U.S.C. 657f).

X (22)(i) 52.219-28, Post-Award Small Business Program Rerepresentation (NOV 2020) (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 (EDWOSB) Concerns (MAR 2020) (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 (MAR 2020) (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 (MAR 2020) (15 U.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 2020) (E.O. 13126).

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

X (30)(i) 52.222-26, Equal Opportunity (SEPT 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).

(ii) Alternate I (July 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 (July 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 (OCT 2020) (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 (Oct 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

(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 (Jun 2014) 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. 552a).

(ii) Alternate I (JAN 2017) of 52.224-3.

Part 12 Clauses (CONTINUED)

(48) 52.225-1, Buy American --Supplies (MAY 2014) (41 U.S.C. chapter 83).

(49)(i) 52.225-3, Buy American --Free Trade Agreements --Israeli Trade Act (MAY 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

(ii) Alternate I (MAY 2014) of 52.225-3.

(iii) Alternate II (MAY 2014) of 52.225-3.

(iv) Alternate III (MAY 2014) of 52.225-3.

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

(51) 52.225-13, Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(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. 2302 Note).

(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 (NOV 2007) (42 U.S.C. 5150).

(55) 52.229-12, Tax on Certain Foreign Procurements (JUN 2020).

(56) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(57) 52.232-30, Installment Payments for Commercial Items (JAN 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

(58) 52.232-33, Payment by Electronic Funds Transfer --System for Award Management (OCT 2018) (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 (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

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

(iii) Alternate II (Feb 2006) of 52.247-64.

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

(1) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

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

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

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

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

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

(7) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015).

(8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

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

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records --Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the

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Part 12 Clauses (CONTINUED)

disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause --

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (JUN 2020) (41 U.S.C. 3509).
- (ii) 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)).
- (iii) 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).
- (iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (v) 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.
- (vi) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- (vii) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).
- (viii) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).
- (ix) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).
- (x) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).
- (xi) 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.
- (xii) 52.222-41, Service Contract Labor Standards (AUG 2018)(41 U.S.C. chapter 67).
- (xiii) (A) 52.222-50, Combating Trafficking in Persons (OCT 2020) (22 U.S.C. chapter 78 and E.O. 13627).
(B) 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 (MAY 2014) (41 U.S.C. chapter 67).
- (xv) 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).
- (xvi) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989).
- (xvii) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015).
- (xviii) 52.222-62 Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- (xix)(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).
- (B) Alternate I (JAN 2017) of 52.224-3.
- (xx) 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).
- (xxi) 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.
- (xxii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

(End of clause)

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

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Part 12 Clauses (CONTINUED)**252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) DFARS****52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) FAR****252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (DEC 2019) DFARS****252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2020) DFARS****(a) Definitions.**

Basic Assessment means a contractor's self assessment of the contractor's implementation of NIST SP 800 -171 that --

- (1) Is based on the Contractor's review of their system security plan(s) associated with covered contractor information system(s);
- (2) Is conducted in accordance with the NIST SP 800 -171 DoD Assessment Methodology; and
- (3) Results in a confidence level of "Low" in the resulting score, because it is a self generated score.

Covered contractor information system has the meaning given in the clause 252.204 -7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this contract.

High Assessment means an assessment that is conducted by Government personnel using NIST SP 800 -171A, Assessing Security Requirements for Controlled Unclassified Information that --

- (1) Consists of --
 - (i) A review of a contractor's Basic Assessment;
 - (ii) A thorough document review;
 - (iii) Verification, examination, and demonstration of a Contractor's system security plan to validate that NIST SP 800 -171 security requirements have been implemented as described in the contractor's system security plan; and
 - (iv) Discussions with the contractor to obtain additional information or clarification, as needed; and
- (2) Results in a confidence level of "High" in the resulting score.

Medium Assessment means an assessment conducted by the Government that --

- (1) Consists of --
 - (i) A review of a contractor's Basic Assessment;
 - (ii) A thorough document review; and
 - (iii) Discussions with the contractor to obtain additional information or clarification, as needed; and
- (2) Results in a confidence level of "Medium" in the resulting score.

(b) Applicability. This clause applies to covered contractor information systems that are required to comply with the National Institute of Standards and Technology (NIST) Special Publication (SP) 800 -171, in accordance with Defense Federal Acquisition Regulation System (DFARS) clause at 252.204 -7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this contract.

(c) Requirements. The Contractor shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800 -171 DoD Assessment, as described in NIST SP 800 -171 DoD Assessment Methodology at https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html, if necessary.

(d) Procedures. Summary level scores for all assessments will be posted in the Supplier Performance Risk System (SPRS) (<https://www.sprs.csd.disa.mil/>) to provide DoD Components visibility into the summary level scores of strategic assessments.

(1) *Basic Assessments.* A contractor may submit, via encrypted email, summary level scores of Basic Assessments conducted in accordance with the NIST SP 800 -171 DoD Assessment Methodology to webpmsmh@navy.mil for posting to SPRS.

- (i) The email shall include the following information:
 - (A) Version of NIST SP 800 -171 against which the assessment was conducted.
 - (B) Organization conducting the assessment (e.g., Contractor self-assessment).
 - (C) For each system security plan (security requirement 3.12.4) supporting the performance of a DoD contract --

(1) All industry Commercial and Government Entity (CAGE) code(s) associated with the information system(s) addressed by the system security plan; and

(2) A brief description of the system security plan architecture, if more than one plan exists.

- (D) Date the assessment was completed
- (E) Summary level score (e.g., 95 out of 110, NOT the individual value for each requirement).

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Part 12 Clauses (CONTINUED)

(F) Date that all requirements are expected to be implemented (*i.e.*, a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800 -171.

(ii) If multiple system security plans are addressed in the email described at paragraph (b)(1)(i) of this section, the Contractor shall use the following format for the report:

System security plan	CAGE codes supported by this plan	Brief description of the plan architecture	Date of assessment	Total score	Date score of 110 will be achieved

(2) *Medium and High Assessments.* DoD will post the following Medium and/or High Assessment summary level scores to SPRS for each system security plan assessed:

- (i) The standard assessed (*e.g.*, NIST SP 800 -171 Rev 1).
- (ii) Organization conducting the assessment, *e.g.*, DCMA, or a specific organization (identified by Department of Defense Activity Address Code (DoDAAC)).
- (iii) All industry CAGE code(s) associated with the information system(s) addressed by the system security plan.
- (iv) A brief description of the system security plan architecture, if more than one system security plan exists.
- (v) Date and level of the assessment, *i.e.*, medium or high.
- (vi) Summary level score (*e.g.*, 105 out of 110, not the individual value assigned for each requirement).
- (vii) Date that all requirements are expected to be implemented (*i.e.*, a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800 -171.

(e) *Rebuttals.*

- (1) DoD will provide Medium and High Assessment summary level scores to the Contractor and offer the opportunity for rebuttal and adjudication of assessment summary level scores prior to posting the summary level scores to SPRS (see SPRS User's Guide https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf).
- (2) Upon completion of each assessment, the contractor has 14 business days to provide additional information to demonstrate that they meet any security requirements not observed by the assessment team or to rebut the findings that may be of question.

(f) *Accessibility.*

- (1) Assessment summary level scores posted in SPRS are available to DoD personnel, and are protected, in accordance with the standards set forth in DoD Instruction 5000.79, Defense-wide Sharing and Use of Supplier and Product Performance Information (PI).
- (2) Authorized representatives of the Contractor for which the assessment was conducted may access SPRS to view their own summary level scores, in accordance with the SPRS Software User's Guide for Awardees/Contractors available at https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf.
- (3) A High NIST SP 800 -171 DoD Assessment may result in documentation in addition to that listed in this clause. DoD will retain and protect any such documentation as "Controlled Unclassified Information (CUI)" and intended for internal DoD use only. The information will be protected against unauthorized use and release, including through the exercise of applicable exemptions under the Freedom of Information Act (*e.g.*, Exemption 4 covers trade secrets and commercial or financial information obtained from a contractor that is privileged or confidential).

(g) *Subcontracts.*

- (1) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items (excluding COTS items).
- (2) The Contractor shall not award a subcontract or other contractual instrument, that is subject to the implementation of NIST SP 800 -171 security requirements, in accordance with DFARS clause 252.204 -7012 of this contract, unless the subcontractor has completed, within the last 3 years, at least a Basic NIST SP 800 -171 DoD Assessment, as described in https://www.acq.osd.mil/dpap/pdi/cyber/strategically_assessing_contractor_implementation_of_NIST_SP_800-171.html, for all covered contractor information systems relevant to its offer that are not part of an information technology service or system operated on behalf of the Government.
- (3) If a subcontractor does not have summary level scores of a current NIST SP 800 -171 DoD Assessment (*i.e.*, not more than 3 years old unless a lesser time is specified in the solicitation) posted in SPRS, the subcontractor may conduct and submit a Basic Assessment, in accordance with the NIST SP 800 -171 DoD Assessment Methodology, to webptsmh@navy.mil for posting to SPRS along with the information required by paragraph (d) of this clause.

(End of clause)

Attachments (CONTINUED)**Attachments****List of Attachments**

File Name	Description
ATTACH_Attachment_1_Schedule_of_Item	Attachment 1
ATTACH_Attachment_2_Delivery_Schedule	Attachment 2