

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

1. REQUISITION NUMBER  
 PAGE 1 OF 11

2. CONTRACT NO. SPE300-20-D-3248  
 3. AWARD/EFFECTIVE DATE 2019 DEC 17  
 4. ORDER NUMBER  
 5. SOLICITATION NUMBER  
 6. SOLICITATION ISSUE DATE

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

9. ISSUED BY CODE SPE300  
 DLA TROOP SUPPORT  
 DIRECTORATE OF SUBSISTENCE  
 700 ROBBINS AVENUE  
 PHILADELPHIA PA 19111-5096  
 USA  
 Local Admin: Elizabeth DiFrancesco PSPTAFC Tel: 215-737-3470 Fax: 215-737-3215  
 Email: ELIZABETH.DIFRANCESCO@DLA.MIL  
 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: 311812  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  8 (A) SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  
 SEE SCHEDULE  
 12. DISCOUNT TERMS Net 30 days  
 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)   
 13b. RATING  
 14. METHOD OF SOLICITATION  RFQ  IFB  RFP

15. DELIVER TO CODE  
 SEE SCHEDULE  
 16. ADMINISTERED BY CODE SPE300  
 SEE BLOCK 9  
 Criticality: PAS: None

17a. CONTRACTOR/ OFFEROR CODE 3H194 FACILITY CODE  
 Y. HATA & COMPANY, LIMITED  
 285 SAND ISLAND ACCESS RD  
 HONOLULU HI 96819-2227  
 USA  
 TELEPHONE NO. 8084474252  
 18a. PAYMENT WILL BE MADE BY CODE SL4701  
 DEF FIN AND ACCOUNTING SVC  
 BSM  
 P O BOX 182317  
 COLUMBUS OH 43218-2317  
 USA

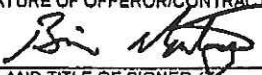

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER  
 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED.  SEE ADDENDUM

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) \$6,295,542.56

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. Y Hata OFFER  
 DATED 2019-Dec-17 YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH, HEREIN IS ACCEPTED AS TO ITEMS:

30a. SIGNATURE OF OFFEROR/CONTRACTOR   
 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)   
 30b. NAME AND TITLE OF SIGNER (Type or Print) Brian Marting, Vice President  
 30c. DATE SIGNED 12/12/19  
 31b. NAME OF CONTRACTING OFFICER (Type or Print) Jacob Slatnick  
 31c. DATE SIGNED 2019 DEC 12

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

32a. QUANTITY IN COLUMN 21 HAS BEEN

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

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

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

1 This bridge contract is awarded to Y. Hata & Co., Limited in accordance with 10 US 2304 (c)(1), whereby award was made using other than full and open competition. All terms and conditions of solicitation, SPE300-14-R-0027 resulting in contract SPE300-15-D-3129 as well as the terms and conditions of bridge contract SPE300-20-D-3248 are incorporated herein and only supplemented by those terms and conditions included in this contract. This bridge contract services the customers in Hawaii Area of Responsibility and visiting ships. The current Administrative catalog for PTA is SPE30017DA030. The new Administrative Catalog for PTA is SPE30020DA017.

2. This contract provides for prime vendor full line distribution support to customers located in Hawaii for a period of 115 days from December 17, 2019 through April 10, 2020. The estimated contract dollar value is \$3,147,771.28. The guaranteed minimum is \$314,777.12. The maximum dollar value is \$6,295,542.56.

3. Distribution prices under this contract remain unchanged from Contract SPE300-15-D-3129, and will be held for the life of this contract.

4. This contract also incorporates updated clauses, terms and new clauses that may not have been in existence at the time of stated solicitation/contract. Please see additional contract language and clauses/clause updates included in Attachment 1, of this award.

5. All other terms and conditions from the original contract SPE30015D3129, its underlining solicitation remain the same and are only changed when conflicting with the terms and conditions contained within this document.

**Form****PID Data - Custom Clause**

Insert (copy and paste) text for - PID information here

**Part 12 Clauses****52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (AUG 2019) 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 2019) (Section 89(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, 108-78 (19 U.S.C. 3805 note)).

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

**[Contracting Officer check as appropriate].**

- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).
- (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509)).
- (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)
- (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) (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. (Oct 2015) (31 U.S.C. 6101 note).
- (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).
- (10) Reserved.
- (11)(i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).
- (ii) Alternate I (Nov 2011) of 52.219-3.
- (12)(i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- (ii) Alternate I (Jan 2011) of 52.219-4.
- (13) Reserved

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**Part 12 Clauses (CONTINUED)**

- (14)(i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2011) (15 U.S.C. 644).  
(ii) Alternate I (Nov 2011).  
(iii) Alternate II (Nov 2011).  
(15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).  
(ii) Alternate I (Oct 1995) of 52.219-7.  
(iii) Alternate II (Mar 2004) of 52.219-7.
- (16) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)).  
 (17)(i) 52.219-9, Small Business Subcontracting Plan (Jan 2017) (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 (Nov 2016) of 52.219-9.  
(v) Alternate IV (Nov 2016) of 52.219-9.
- (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).  
(19) 52.219-14, Limitations on Subcontracting (Jan 2017) (15 U.S.C. 637(a)(14)).
- (20) 52.219-16, Liquidated Damages --Subcon-tracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).  
(21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657 f).
- (22) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).  
(23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).  
(24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).
- (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).  
 (26) 52.222-19, Child Labor --Cooperation with Authorities and Remedies (Jan 2018) (E.O. 13126).  
 (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).  
(28) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).  
(29) 52.222-35, Equal Opportunity for Veterans (Oct 2015)(38 U.S.C. 4212).  
(30) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- (31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).  
 (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).  
(33)(i) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).  
(ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).  
(34) 52.222-54, Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)  
(35)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA -Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)  
(ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)  
(36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).  
(37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).  
(38)(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).  
(ii) Alternate I (Oct 2015) of 52.223-13.  
(39)(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).  
(ii) Alternate I (Jun 2014) of 52.223-14.  
(40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).  
(41)(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).  
(ii) Alternate I (Jun 2014) of 52.223-16.
- (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).



**Part 12 Clauses (CONTINUED)**

- (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).
- (44) 52.223-21, Foams (Jun 2016) (E.O. 13693).
- (45)(i) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).
- (ii) Alternate I (JAN 2017) of 52.224-3.
- (46) 52.225-1, Buy American --Supplies (May 2014) (41 U.S.C. chapter 83).
- (47)(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.
- (48) 52.225-5, Trade Agreements (Oct 2016) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- X** (49) 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).
- (50) 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).
- (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- (54) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- X** (55) 52.232-33, Payment by Electronic Funds Transfer --System for Award Management (Jul 2013) (31 U.S.C. 3332).
- (56) 52.232-34, Payment by Electronic Funds Transfer --Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).
- (57) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).
- (58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- (59) 52.242-5, Payments to Small Business Subcontractors (Jan 2017)(15 U.S.C. 637(d)(12)).
- (60)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).
- (ii) Alternate I (Apr 2003) of 52.247-64.
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- Contracting Officer check as appropriate.
- (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).
- (2) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).
- (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards --Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment --Requirements (May 2014) (41 U.S.C. chapter 67).
- (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services --Requirements (May 2014) (41 U.S.C. chapter 67).
- (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
- (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792).
- (11) 52.237-11, Accepting and Dispensing of \$1 Coin (Sept 2008) (31 U.S.C. 5112(p)(1)).
- (d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records --Negotiation.
- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to

**CONTINUED ON NEXT PAGE**

**Part 12 Clauses (CONTINUED)**

examine any of the Contractor's directly pertinent records involving transactions related to this contract.

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

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

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

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

(ii) 52.203-19, 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) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (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.

(iv) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

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

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

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

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

(ix) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212)

(x) 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.

(xi) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).

(xii) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O 13627). Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O 13627).

(xiii) 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).

(xiv) 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).

(xv) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).

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

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

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

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

(xix) 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).

(xx) 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.

(xxi) 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)

**Part 12 Clauses (CONTINUED)**

As prescribed in 3.1004(b), insert the following clause:

(a) Definition.

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c).

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites.

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

<b>Poster(s)</b>	<b>Obtain from</b>
------------------	--------------------

(Contracting Officer shall insert ---

(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5.5 million, except when the subcontract.

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

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

**252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) DFARS**

**252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016) DFARS**

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

**252.211-7005 SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (NOV 2005) DFARS**

As prescribed in 211.273-4, use the following clause:

(a) *Definition.* “SPI process,” as used in this clause, means a management or manufacturing process that has been accepted previously by the Department of Defense under the Single Process Initiative (SPI) for use in lieu of a specific military or Federal specification or standard at specific facilities. Under SPI, these processes are reviewed and accepted by a Management Council, which includes representatives of the Contractor, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the military departments.

(b) Offerors are encouraged to propose SPI processes in lieu of military or Federal specifications and standards cited in the solicitation. A

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**Part 12 Clauses (CONTINUED)**

listing of SPI processes accepted at specific facilities is available via the Internet at [http://guidebook.dema.mil/20/guidebook\\_process.htm](http://guidebook.dema.mil/20/guidebook_process.htm) (paragraph 4.2).

- (c) An offeror proposing to use an SPI process in lieu of military or Federal specifications or standards cited in the solicitation shall
- (1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted;
  - (2) Identify each facility at which the offeror proposes to use the specific SPI process in lieu of military or Federal specifications or standards cited in the solicitation;
  - (3) Identify the contract line items, subline items, components, or elements affected by the SPI process; and
  - (4) If the proposed SPI process has been accepted at the facility at which it is proposed for use, but is not yet listed at the Internet site specified in paragraph (b) of this clause, submit documentation of Department of Defense acceptance of the SPI process.
- (d) Absent a determination that an SPI process is not acceptable for this procurement, the Contractor shall use the following SPI processes in lieu of military or Federal specifications or standards:

*(Offeror insert information for each SPI process)*

SPI Process:

Facility:

Military or Federal Specification or Standard:

Affected Contract Line Item Number, Subline Item Number, Component, or Element:

- (e) If a prospective offeror wishes to obtain, prior to the time specified for receipt of offers, verification that an SPI process is an acceptable replacement for military or Federal specifications or standards required by the solicitation, the prospective offeror
- (1) May submit the information required by paragraph (d) of this clause to the Contracting Officer prior to submission of an offer; but
  - (2) Must submit the information to the Contracting Officer at least 10 working days prior to the date specified for receipt of offers.
- (End of clause)

**252.215-7014 EXCEPTION FROM CERTIFIED COST OR PRICING DATA REQUIREMENTS FOR FOREIGN MILITARY SALES INDIRECT OFFSETS (JUN 2018) DFARS**

**252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017) DFARS**

**52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) FAR**

**252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (DEC 2018) DFARS**

As prescribed in 232.7004(b), use the following clause:

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

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) *Electronic invoicing.* The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

(c) *WAWF access.* To access WAWF, the Contractor shall-

- (1) Have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and
- (2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.

(d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>

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**Part 12 Clauses (CONTINUED)**

(e) *WAWF methods of document submission.* Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions.* The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:

(1) *Document type.* The Contractor shall use the following document type(s).

*(Contracting Officer: Insert applicable document type(s).)*

*Note: If a "Combo" document type is identified but not supportable by the Contractor's business systems, an "Invoice" (stand-alone) and "Receiving Report" (stand-alone) document type may be used instead.)*

(2) *Inspection/acceptance location.* The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

*(Contracting Officer: Insert inspection and acceptance locations or "Not applicable.")*

(3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table\*

Field Name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC	
Issue By DoDAAC	
Admin DoDAAC	
Inspect By DoDAAC	
Ship To Code	
Ship From Code	
Mark For Code	
Service Approver (DoDAAC)	
Service Acceptor (DoDAAC)	
Accept at Other DoDAAC	
LPO DoDAAC	
DCAA Auditor DoDAAC	
Other DoDAAC(s)	

*(\*Contracting Officer: Insert applicable DoDAAC information or "See schedule" if multiple ship to/acceptance locations apply, or "Not applicable.")*

(4) *Payment request and supporting documentation.* The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

(5) *WAWF email notifications.* The Contractor shall enter the e-mail address identified below in the "Send Additional Email Notifications" field of WAWF once a document is submitted in the system.

*(Contracting Officer: Insert applicable email addresses or "Not applicable.")*

(g) *WAWF point of contact.*

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact.

*(Contracting Officer: Insert applicable information or "Not applicable.")*

(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

(End of clause)

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**Part 12 Clauses (CONTINUED)****252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006) DFARS****52.233-3 PROTEST AFTER AWARD (AUG 1996) FAR****252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013) DFARS****52.247-34 F.O.B. DESTINATION (NOV 1991) FAR****52.247-60 GUARANTEED SHIPPING CHARACTERISTICS (JAN 2017) FAR**As prescribed in 47.305-16(b)(1), insert the following clause:

(a) The offeror is requested to complete paragraph (a)(1) of this clause, for each part or component which is packed or packaged separately. This information will be used to determine transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in paragraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer's best estimate of the actual transportation costs. If the item shipping costs, based on the actual shipping characteristics, exceed the item shipping costs used for evaluation purposes, the Contractor agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs actually incurred, and the costs which would have been incurred if the evaluated shipping characteristics had been accurate.

(1) To be completed by the offeror:

- (i) Type of container: Wood Box  Fiber Box  , Barrel  , Reel  , Drum  , Other (Specify) ;
- (ii) Shipping configuration: Knocked-down  , Set-up  , Nested  , Other (specify) ;
- (iii) Size of container: " (Length), × " (Width), × " (Height) = Cubic Ft;
- (iv) Number of items per container each;
- (v) Gross weight of container and contents Lbs;
- (vi) Palletized/skidded  Yes  No;
- (vii) Number of containers per pallet/skid ;
- (viii) Weight of empty pallet bottom/skid and sides Lbs;
- (ix) Size of pallet/skid and contents Lbs Cube ;
- (x) Number of containers or pallets/skids per railcar \*
- (A) Size of railcar
- (B) Type of railcar
- (xi) Number of containers or pallets/skids per trailer \*
- (A) Size of trailer Ft
- (B) Type of trailer

\* Number of complete units (line item) to be shipped in carrier's equipment.

(2) To be completed by the Government after evaluation but before contract award:

- (i) Rate used in evaluation ;
- (ii) Tender/Tariff ;
- (iii) Item .

(b) The guaranteed shipping characteristics requested in paragraph (a)(1) of this clause do not establish actual transportation requirements, which are specified elsewhere in this solicitation. The guaranteed shipping characteristics will be used only for the purpose of evaluating offers and establishing any liability of the successful offeror for increased transportation costs resulting from actual shipping characteristics which differ from those used for evaluation in accordance with paragraph (a) of this clause.

(End of clause)

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**Part 12 Clauses (CONTINUED)****52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) FAR****52.253-1 COMPUTER GENERATED FORMS (JAN 1991) FAR****Attachments****List of Attachments**

File Name	Description
ATTACH_attachment_1	Attachemnt 1.pdf
ATTACH_signed_contract	signed 3248.pdf

## **CONTRACTOR CODE OF BUSINESS ETHICS**

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 violation 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.



## **DLA PACKAGING REQUIREMENTS FOR PROCUREMENT**

### **(1) Additional Packaging and Marking Requirements:**

(a) Prohibited cushioning and wrapping materials: Use of asbestos, excelsior, newspaper, shredded paper (all types, including wax paper and computer paper), and similar hygroscopic or non-neutral materials and all types of loose-fill materials, including polystyrene, is prohibited for application such as cushioning, fill, stuffing, and dunnage. In addition, the use of yellow wrapping or packaging material is prohibited except where used for the containment of radioactive material.

(b) MIL-STD-129 establishes requirements for contractors that ship packaged materiel to the Government to provide both linear bar codes and two-dimensional (2D) symbols on shipping labels. Shipping labels with 2D symbols are referred to as Military Shipping Labels (MSL) and are required on all CONUS and OCONUS shipments with the following exceptions:

(1) Subsistence items procured through full-line food distributors (prime contractors), “market ready” type items shipped within the Continental United States (CONUS) to customers within CONUS;

(2) Any item for which ownership remains with the contractor until the item is placed in designated locations at the customer location prior to issuance to the customer. Government control begins upon placement of the item by the contractor into the designated location or issuance from the designated location by contractor personnel (i.e., the contractor is required to stock bins at the customer location and/or issue parts from a contractor controlled parts room).

(3) Bulk petroleum, oil and lubricant products delivered by pipeline; or tank car, tanker and tank trailer for which the container has a capacity greater than 450 L (119 gallons) as a receptacle for a liquid; a maximum net mass greater than 400 kg (882 pounds) and a capacity greater than 450123 L (119 gallons) as a receptacle for a solid; or a water capacity greater than 454 kg (1000124 pounds) as a receptacle for a gas.

(4) Medical items procured through Customer Direct suppliers or prime contractors that do not enter the Defense Transportation System.<sup>128</sup>

(5) Delivery orders when the basic contract has not been modified to require MIL-STD-129.

(c) MIL-STD-129 provides numerous illustrations of what should be bar-coded and the recommended placement of the bar code. Further information is available on the DLA Packaging Web Site at: <http://www.dla.mil/LandandMaritime/Offers/Services/TechnicalSupport/Logistics/Packaging.aspx> .

(2) Requirements for Treatment of Wood Packaging Material (WPM)

(a) Assets packed in or on wood pallets, skids, load boards, pallet collars, wood boxes, reels, dunnage, crates, frames, and cleats must comply with the Heat Treatment (HT) or Heat Treatment/Kiln Dried (HT/KD) (continuous at 56 degrees Centigrade for 30 minutes) standard in 09/19/2016 5 DoD Manual 4140.65-M "Compliance for Defense Packaging: Phytosanitary Requirements for Wood Packaging Material (WPM)". WPM must be stamped or branded with the appropriate certification markings as detailed in DOD 4140.65-M and be certified by an accredited American Lumber Standards Committee (ALSC)-recognized agency. The WPM certification markings must be easily visible, especially in pallet loads, to inspectors.

## **SANITARY CONDITIONS**

(a) Food establishments.

(1) All establishments and distributors furnishing subsistence items under DLA Troop Support contracts are subject to sanitation approval and surveillance as deemed appropriate by the Military Medical Service or by other Federal agencies recognized by the Military Medical Service. The Government does not intend to make any award for, nor accept, any subsistence products manufactured, processed, or stored in a facility which fails to maintain acceptable levels of food safety and food defense, is operating under such unsanitary conditions as may lead to product contamination or adulteration constituting a health hazard, or which has not been listed in an appropriate Government directory as a sanitarily approved establishment when required. Accordingly, the supplier agrees that, except as indicated in paragraphs (2) and (3) below, products furnished as a result of this contract will originate only in establishments listed in the U.S. Army Public Health Command (USAPHC ) Circular 40-1, Worldwide Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement, (Worldwide Directory) (available at: <http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDApprovedFoodSources.aspx> ). Compliance with the current edition of DoD Military Standard 3006A, Sanitation Requirements for Food Establishments, is mandatory for listing of establishments in the Worldwide Directory. Suppliers also agree to inform the Contracting Officer immediately upon notification that a facility is no longer sanitarily approved and/or removed from the Worldwide Directory and/or other Federal agency's listing, as indicated in paragraph (2) below. Suppliers also agree to inform the Contracting Officer when sanitary approval is regained and listing is reinstated.

(2) Establishments furnishing the products listed below and appearing in the publications indicated need not be listed in the worldwide directory. Additional guidance on specific listing requirements for products/plants included in or exempt from listing is provided in Appendix A of the worldwide directory.

(i) Meat and meat products and poultry and poultry products may be supplied from establishments which are currently listed in the "Meat, Poultry and Egg Inspection Directory," published by the

United States Department of Agriculture, Food Safety and Inspection Service (USDA, FSIS), at <http://www/fsis/usda/gov/wps/portal/fsis/topics/inspection/mpi-directory> . The item, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the USDA shield and applicable establishment number. USDA listed establishments processing products not subject to the Federal Meat and Poultry Products Inspection Acts must be listed in the Worldwide Directory for those items.

(ii) Intrastate commerce of meat and meat products and poultry and poultry products for direct delivery to military installations within the same state (intrastate) may be supplied when the items are processed in establishments under state inspection programs certified by the USDA as being “at least equal to” the Federal Meat and Poultry Products Inspection Acts. The item, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the official inspection legend or label of the inspection agency and applicable establishment number.

(iii) Shell eggs may be supplied from establishments listed in the “List of Plants Operating under USDA Poultry and Egg Grading Programs” published by the USDA, Agriculture Marketing Service (AMS) at <http://www.ams.usda.gov/poultry/grading.htm>.

(iv) Egg products (liquid, dehydrated, frozen) may be supplied from establishments listed in the “Meat, Poultry and Egg Product Inspection Directory” published by the USDA FSIS at [http://apps.ams.usda.gov/plantbook/Query\\_Pages/PlantBook\\_Query.asp](http://apps.ams.usda.gov/plantbook/Query_Pages/PlantBook_Query.asp) . All products, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the official inspection legend or label of the inspection agency and applicable establishment number.

(v) Fish, fishery products, seafood, and seafood products may be supplied from establishments listed under “U.S. Establishments Approved For Sanitation And For Producing USDC Inspected Fishery Products” in the “USDC Participants List for Firms, Facilities, and Products”, published electronically by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration Fisheries (USDC, NOAA) (available at: [seafood.nmfs.noaa.gov](http://seafood.nmfs.noaa.gov)). All products, to be acceptable, shall, on delivery, bear on the product, its wrappers or shipping container, as applicable, the full name and address of the producing facility.

(vi) Pasteurized milk and milk products may be supplied from plants having a pasteurization plant compliance rating of 90 percent or higher, as certified by a state milk sanitation officer and listed in “Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers” (IMS), published by the U.S. Department of Health and Human Services, Food and Drug Administration (USDHHS, FDA) at <http://www.fda.gov/Food/GuidanceRegulation/FederalStateFoodPrograms/ucm2007965.htm>. These plants may serve as sources of pasteurized milk and milk products as defined in Section I of the “Grade ‘A’ Pasteurized Milk Ordinance” (PMO) published by the USDHHS, FDA at

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/default.htm>.

(vii) Manufactured or processed dairy products only from plants listed in Section I of the “Dairy Plants Surveyed and Approved for USDA Grading Service”, published electronically by Dairy Grading Branch, AMS, USDA (available at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRD3651022> ) may serve as sources of manufactured or processed dairy products as listed by the specific USDA product/operation code. Plants producing products not specifically listed by USDA product/operation code must be Worldwide Directory listed (e.g., plant is coded to produce cubed cheddar but not shredded cheddar; or, plant is coded for cubed cheddar but not cubed mozzarella). Plants listed in Section II and denoted as “P” codes (packaging and processing) must be Worldwide Directory listed.

(viii) Oysters, clams and mussels from plants listed in the “Interstate Certified Shellfish Shippers Lists” (ICSSL), published by the USDHHS, FDA at <http://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2006753.htm>.

(3) Establishments exempt from Worldwide Directory listing. Refer to AR 40-657/NAVSUPINST 4355.4H/MCO P1010.31H, Veterinary/Medical Food Safety, Quality Assurance, and Laboratory Service, for a list of establishment types that may be exempt from Worldwide Directory listing. (AR 40-657 is available from National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312 ; 1-888-584-8332 ; or download from web site: [http://www.apd.army.mil/pdffiles/r40\\_657.pdf](http://www.apd.army.mil/pdffiles/r40_657.pdf) ) For the most current listing of exempt plants/products, see the Worldwide Directory (available at: <http://phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDAApprovedFoodSources.aspx>).

(4) Subsistence items other than those exempt from listing in the Worldwide Directory, bearing labels reading “Distributed By”, “Manufactured For”, etc., are not acceptable unless the source of manufacturing/processing is indicated on the label or on accompanying shipment documentation.

(5) When the Military Medical Service or other Federal agency acceptable to the Military Medical Service determines the levels of food safety and food defense of the establishment or its products have or may lead to product contamination or adulteration, the Contracting Officer will suspend the work until such conditions are remedied to the satisfaction of the appropriate inspection agency. Suspension of the work shall not extend the life of the contract, nor shall it be considered sufficient cause for the Contractor to request an extension of any delivery date. In the event the Contractor fails to correct such objectionable conditions within the time specified by the Contracting Officer, the Government shall have the right to terminate the contract in accordance with the “Default” clause of the contract.

(b) Delivery conveyances.

The supplies delivered under this contract shall be transported in delivery conveyances maintained to prevent tampering with and /or adulteration or contamination of the supplies, and if applicable, equipped to maintain a prescribed temperature. The delivery conveyances shall be subject to inspection by the government at all reasonable times and places. When the sanitary conditions of the delivery conveyance have led, or may lead to product contamination, adulteration, constitute a health hazard, or the delivery conveyance is not equipped to maintain prescribed temperatures, or the transport results in product 'unfit for intended purpose', supplies tendered for acceptance may be rejected without further inspection.

#### **NON-ACCEPTABILITY OF GOVERNMENT SURPLUS MATERIAL**

(a) Definition.

“Surplus material,” as used in this clause, means new, unused material that was purchased and accepted by the U.S. Government and subsequently sold by the DLA Disposition Services, by Contractors authorized by DLA Disposition Services, or through another Federal Government surplus program. The terms “surplus” and “Government surplus” are used interchangeably in this clause.

(b) The Government has determined that offers of surplus material will not be considered for this acquisition.

#### **REMOVAL OF GOVERNMENT IDENTIFICATION FROM NON-ACCEPTED SUPPLIES**

The Contractor shall remove or obliterate from a rejected end item and its packing and packaging, any marking, symbol, or other representation that the end item or any part of it has been produced or manufactured for the United States Government. Removal or obliteration shall be accomplished prior to any donation, sale, or disposal in commercial channels.

#### **FOOD AND DRUG ADMINISTRATION (FDA) COMPLIANCE - DLA TROOP SUPPORT MEDICAL AND SUBSISTENCE**

If any supplies acquired hereunder are recalled under the provisions of the Federal Food, Drug and Cosmetic Act, and regulations there under, the Contractor shall, at the Government's option, either reimburse the Government or repair/replace the recalled supplies. Additionally, the Contractor shall notify the Contracting Officer immediately when a firm decides to voluntarily recall or withdraw any product from the marketplace. Upon notification by the Contracting Officer that supplies acquired hereunder have been recalled, the Contractor shall either (a) accept certificates of destruction from the



Government after the supplies have been properly disposed of, (b) request return of the supplies, or (c) if supplies may be repaired on site without transporting them from their location, furnish all materials necessary to effect repairs. Replacement or reimbursement will be accomplished by the Contractor immediately on receipt of Certificates of Destruction or returned supplies. The costs of replacement or repair of supplies, and transportation and handling costs for movement of returned, replaced or repaired supplies within the contiguous United States shall be paid by the Contractor. The provisions of this clause are applicable only when the value of the recalled supplies in the possession of the Government amounts to \$100 or more. The rights and remedies of the Government provided in this clause are in addition to, and do not limit, any rights afforded to the Government by any other clause in the contract.

### **SAFETY OF LIFE AT SEA (SOLAS)**

1. SOLAS requires that the Verified Gross Mass (VGM) of all loaded containers be provided to the ocean carrier and terminal representative before any container is lifted onboard a vessel. Additional information on these requirements is included in Military Surface Deployment and Distribution Command Customer Advisory found at <https://www.sddc.army.mil/res/Pages/advisories.aspx>.
2. It is the Subsistence Prime Vendor's responsibility to ensure all information and documentation submitted is accurate so that containers will not be delayed during transit. The Subsistence Prime Vendor is advised that a container missing the VGM certification may not be loaded onboard the vessel and may be denied entry to the port facility. Any discrepancies in the VGM could result in additional charges and/or cargo being frustrated within the transportation pipeline. The Subsistence Prime Vendor will be responsible for costs incurred for delays due to improper or erroneous documentation, including documentation related to SOLAS requirements. The U.S. Government is not responsible for any costs resulting from or related to delays associated with these SOLAS requirements or improper documentation.
3. The Subsistence Prime Vendor is responsible for ensuring its continued compliance with transportation related laws and regulations applicable to performance under this contract.

### **Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (AUG 2019) 52.212-5**

(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 2019) (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 (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

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

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

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) (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. (Oct 2015) (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 (Nov 2011) (15 U.S.C.657a).

\_\_ (ii) Alternate I (Nov 2011) of 52.219-3.

\_\_ (12)

(i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

\_\_ (ii) Alternate I (Jan 2011) of 52.219-4.

\_\_ (13) [Reserved]

\_\_ (14)

(i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2011) (15 U.S.C.644).

\_\_ (ii) Alternate I (Nov 2011).

\_\_ (iii) Alternate II (Nov 2011).

\_\_ (15)

(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.

\_\_ (iii) Alternate II (Mar 2004) of 52.219-7.

\_X\_ (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 (Aug 2018) (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 (Nov 2016) of 52.219-9.

\_\_ (v) Alternate IV (Aug 2018) of 52.219-9

\_\_ (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).

\_\_ (19) 52.219-14, Limitations on Subcontracting (Jan 2017) (15 U.S.C.637(a)(14)).

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

(21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).

(22) 52.219-28, Post Award Small Business Program Representation (Jul 2013) (15 U.S.C. 632(a)(2)).

(23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).

(24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).

(25) 52.222-3, Convict Labor (June 2003) (E.O.11755).

(26) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2018) (E.O.13126).

(27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(28)

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

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

(29)

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

(ii) Alternate I (July 2014) of 52.222-35.


(30)

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

(ii) Alternate I (July 2014) of 52.222-36.

(31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

  (33)

(i) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).

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

\_\_ (34) 52.222-54, Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

\_\_ (35)

(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_ (36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

\_\_ (37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun2016) (E.O. 13693).

\_\_ (38)

(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Oct 2015) of 52.223-13.

\_\_ (39)

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

\_\_ (ii) Alternate I (Jun 2014) of 52.223-14.

\_\_ (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

\_\_ (41)

(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Jun 2014) of 52.223-16.

\_X\_ (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

\_\_ (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

\_\_ (44) 52.223-21, Foams (Jun 2016) (E.O. 13693).

\_\_ (45)

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



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



\_\_ (46) 52.225-1, Buy American-Supplies (May 2014) (41 U.S.C. chapter 83).



(47)

(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.



\_\_ (48) 52.225-5, Trade Agreements (Aug 2018) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

\_X\_ (49) 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).

\_\_ (50) 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).

\_\_ (51) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

\_\_ (52) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007)  
(42 U.S.C. 5150).

\_\_ (53) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C.4505,  
10 U.S.C.2307(f)).

\_\_ (54) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C.4505,  
10 U.S.C.2307(f)).

\_X\_ (55) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct 2018)  
(31 U.S.C. 3332).

\_\_ (56) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management  
(Jul 2013) (31 U.S.C.3332).

\_\_ (57) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C.3332).

\_\_ (58) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

\_\_ (59) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).

\_\_ (60)

(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) 52.222-17, Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).

\_\_ (2) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

\_\_ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

\_\_ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

\_\_ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (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, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

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

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

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

(e)

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

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

(ii) 52.203-19, 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 2019) (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 \$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.

(vi) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

- (vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (viii) 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).
- (ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C.4212).
- (x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).
- (xi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C.4212)
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).
- (xiv)
- (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (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).
- (xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
- (xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).
- (xvii) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).
- (xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
- (xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).
- (xx)
- (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).
  - (B) Alternate I (Jan 2017) of 52.224-3.
- (xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- (xxii) 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.
- (xxiii) 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.

**52.252-2 CLAUSES INCORPORATED BY REFERENCE**

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):

- FAR: <https://www.acquisition.gov/far/index.html>;
- DFARS: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>
- DLAD: <http://www.dla.mil/Acquisition/Documents/DLAD%20Rev%205.htm>

*The following additional clauses are incorporated by reference:*

<u>CLAUSE NUMBER</u>	<u>TITLE/ DATE</u>
252.201-7000	Contracting Officer’s Representative DFARS (DEC 1991)
52.203-3	Gratuities FAR (APR 1984)
52.203-6	Restrictions on Subcontractor Sales to the Government FAR (SEP 2006)
52.203-6	Restrictions on Subcontractor Sales to the Government ALT 1 (SEP 2006)
52.203-13	Contractor Code of Business Ethics and Conduct FAR (OCT 2015)
252.203-7000	Requirements Relating to Compensation of Former DOD Officials DFARS (SEP 2011)
252.203-7002	Requirement to Inform Employees of Whistleblower Rights DFARS (SEP 2013)
252.203-7003	Agency Office of the Inspector General DFARS (DEC 2012)
252.203-7005	Representation Relating to Compensation of Former DoD Officials DFARS (NOV 2011)
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper FAR (MAY 2011)
52.204-7	System for Award Management FAR (OCT 2018)
52.204-9	Personal Identity Verification of Contractor Personnel FAR (JAN 2011)

<u>CLAUSE NUMBER</u>	<u>TITLE/ DATE</u>
52.204-13	System for Award Management Maintenance FAR (OCT 2016)
52.204-16	Commercial and Government Entity Code Reporting FAR (JUL 2016)
52.204-18	Commercial and Government Entity Code Maintenance FAR (JUL 2016)
52.204-19	Incorporation by Reference of Representations and Certifications (Dec 2014)
52.204-20	Predecessor of Offeror (July 2016)
52.204-21	Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)
52.204-22	Alternative Line Item Proposal (Jan 2017)
252.204-7003	Control of Government Personnel Work Product DFARS (APR 1992)
252.204-7004	Alternate A, System for Award Management DFARS (FEB 2019)
252.204-7011	Alternative Line Item Structure DFARS (SEP 2011)
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting DFARS (OCT 2016)
52.204-9000	Contractor Personnel Security Requirements DLAD (JUL 2015)
52.204-9001	Electronic Order Transmission DLAD
252.205-7000	Provision of Information to Cooperative Agreement Holders DFARS (DEC 1991)
52.208-9	Contractor Use of Mandatory Sources of Supply or Services FAR (MAY 2014)
52.209-7	Information Regarding Responsibility Matters FAR (OCT 2018)
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters FAR (OCT 2018)
52.209-11	Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law (FEB 2016)
252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Government of a Country That is a State Sponsor of Terrorism DFARS (OCT 2015)
52.211-5	Material Requirements FAR (AUG 2000)

<u>CLAUSE NUMBER</u>	<u>TITLE/ DATE</u>
52.211-17	Delivery of Excess Quantities FAR (SEPT 1989)
252.211-7006	Passive Radio Frequency Identification DFARS (MAR 2018)
252.211-7007	REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012)
52.211-9014	Contractor Retention of Traceability Documentation DLAD
52.212-1	Instructions to Offerors -- Commercial Items (OCT 2019)
52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data FAR (OCT 2010)
52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, Alt IV FAR (OCT 2010)
52.215-9003	Use of Past Performance Information Retrieval System – Statistical Reporting (PPIRS-SR) Information in Past Performance Evaluation DLAD
52.216-18	Ordering (Oct 1995)
52.216-19	Order Limitations FAR (OCT 1995)
52.216-22	Indefinite Quantity FAR (OCT 1995)
252.216-7006	Ordering DFARS (MAY 2011)
52.216-9036	Evaluation of Offers – Economic Price Adjustment DLAD (FEB 2009)
52.217-9017	Tailored Logistics Support Purchasing Reviews DLAD (NOV 2011)
52.219-6	Notice of Total Small Business Set-Aside. (Deviation Alternate 1 DEC 2018)
52.219-8	Utilization of Small Business Concerns FAR (NOV 2016)
52.212-3	Offeror Representations and Certifications-Commercial Items (OCT 2018)
52.222-26	Equal Opportunity FAR (SEP 2016)
52.222-56	Certification Regarding Trafficking in Persons Compliance Plan FAR (MAR 2015)
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements DFAR (Dec 2010)
52.225-13	Restriction on Certain Foreign Purchases FAR (JUN 2008)
52.225-14	Inconsistency Between English Version and Translation of Contract FAR (FEB 2000)

<u>CLAUSE NUMBER</u>	<u>TITLE/ DATE</u>
52.225-25	Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certification FAR (AUG 2018)
252.225-7000	BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (NOV 2014)
252.225-7001	Buy American and Balance of Payments Program DFARS (DEC 2017)
252.225-7002	Qualifying Country Sources as Subcontractors DFARS (DEC 2017)
252.225-7012	Preference for Certain Domestic Commodities DFARS (DEC 2017)
252.225-7021	Trade Agreements—Basic DFARS (DEC 2017)
252.225-7042	Authorization to Perform DFARS (APR 2003)
252.225-7048	Export-Controlled Items DFARS (JUN 2013)
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns DFARS (SEP 2004)
52.227-1	Authorization and Consent (Dec 2007)
52.228-3	Workers' Compensation Insurance (Defense Base Act) FAR (JUL 2014)
52.228-5	Insurance -- Work on a Government Installation FAR (JAN 1997)
52.229-3	Federal, State, and Local Taxes (FEB 2013)
252.229-7000	Invoices Exclusive of Taxes or Duties DFARS (JUN 1997)
52.232-11	Extras (APR 1984)
52.232-17	Interest FAR (MAY 2014)
52.232-33	Payment by Electronic Funds Transfer-- System for Award Management FAR (OCT 2018)
52.232-37	Multiple Payment Arrangements FAR (MAY 1999)
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports DFARS (DEC 2018)
252.232-7008	Assignment of Claims (Overseas) DFARS (JUN 1997)
252.232-7010	Levies on Contract Payments DFARS (DEC 2006)



<u>CLAUSE NUMBER</u>	<u>TITLE/ DATE</u>
52.233-2	Service of Protest FAR (SEP 2006)
52.233-3	Protest after Award FAR (AUG 1996)
252.233-7001	Choice of Law (Overseas) DFARS (JUN 1997)
52.233-9000	Agency Protests DLAD (NOV 2011)
52.233-9001	Disputes – Agreement to use Alternate Dispute Resolution (DEC 2016)
252.237-7010	Prohibition on Interrogation of Detainees by Contractor Personnel DFARS (JUN 2013)
252.237-7019	Training for Contractor Personnel Interacting with Detainees DFARS (JUN 2013)
52.242-13	Bankruptcy FAR (JUL 1995)
52.242-15	Stop-Work Order FAR (AUG 1989)
252.243-7001	Pricing of Contract Modifications DFARS (DEC 1991)
52.245-1	Government Property FAR (JAN 2017)
252.246-7004	Safety of Facilities, Infrastructure, and Equipment for Military DFARS (OCT 2010)
52.247-34	F.o.b. Destination FAR (NOV 1991)
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels FAR (FEB 2006)
252.247-7023	Transportation of Supplies by Sea DFARS (FEB 2019)
52.249-8	Default (Fixed-Price Supply and Service) (Apr 1984)
52.251-1	Government Supply Sources FAR (APR 2012)
252.251-7000	Ordering From Government Supply Sources DFARS (AUG 2012)
52.252-2	Clauses Incorporated by Reference FAR (FEB 1998)
52.252-6	Authorized Deviations in Provisions (Apr 1984)
52.253-1	Computer Generated Forms FAR (JAN 1991)
52.245-9	Use and Changes (APR 2012)
252.211-7007	Reporting of Government-Furnished Property (AUG 2012)

<u>CLAUSE NUMBER</u>	<u>TITLE/ DATE</u>
252.245-7001	Tagging, Labeling, and Marking of Government-Furnished Property (APR 2012)
252.245-7002	Reporting Loss of Government Property (DEC 2017)
252.245-7003	Contractor Property Management System Administration (APR 2012)
252.245-7004	Reporting, Reutilization, and Disposal (DEC 2017)

The following additional clauses are set forth in full text:

**52.212-3 Offeror Representations and Certifications -- Commercial Items (OCT 2018)**

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 (u) of this provision.

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

“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—

(6) 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

(7) 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.

“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—

- (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” 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.

“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 the 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 Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code 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 (u) 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 is to 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 CFR 124.1002.

(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.

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

(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.

(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:

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(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 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) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those 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 (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item,” “component,” “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) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “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) or 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, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

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.:

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[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:

--	--

[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:


[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; and

(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 \$3,500 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 Product

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 database 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 email questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) Representation and Certification. 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 \$3,500 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 (50 U.S.C. 1701 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 section 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 and 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 (52.212-1(k)).

(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 Web site 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 Web site a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible Web site includes the Offeror's own Web site 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 Web site(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).

(End of Provision)

*Alternate I (Oct 2014).* 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.)

[*The offeror shall check the category in which its ownership falls*]:

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.

## **52.216-19 Order Limitations (Oct 1995)**

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$250, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.



(b) Maximum order. The Contractor is not obligated to honor --

(1) Any order for a single item in excess of     N/A     [insert dollar figure or quantity];

(2) Any order for a combination of items in excess of     N/A     [insert dollar figure or quantity]; or

(3) A series of orders from the same ordering office within     N/A     days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within     N/A     days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

<b>252.203-7005 Representation Relating to Compensation of Former DoD Officials (NOV 2011) DFARS</b>
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(a) *Definition.* "Covered DoD official" is defined in the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials.

(b) By submission of this offer, the offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in

compliance with all post-employment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101-2107, and 5 CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104-2.

**Procurement Note: L01 Electronic Award Transmission (SEP 2016)**

Notice of awards are provided to suppliers by either:

(1) Electronic email containing a link to the electronic copy of the Department of Defense (DD) Form

1155, Order for Supplies or Services, on the DIBBS; or

(2) Electronic Data Interchange (EDI) 850 utilizing American National Standards Institute (ANSI) X12 Standards through a DLA transaction services approved Value Added Network (VAN).

Information regarding EDI, ANSI X12 transactions and DLA transaction services approved Value Added Networks (VANs) can be obtained at <https://www.transactionservices.dla.mil/daashome/edi-vanlistdla.asp>.

**Procurement Note: L02 Electronic Order Transmission (SEP 2016)**

Offerors shall identify one of the following alternatives for paperless order transmission:

( ) American National Standards Institute (ANSI) X12 Standards through a DLA transaction services approved value added network (VAN).

( ) Electronic mail (email) award notifications containing web links to electronic copies of the Department of Defense (DD) Form 1155, Order for Supplies or Services.

Email notification requires registration on the DLA internet bid board system (DIBBS) home page at <https://www.dibbs.bsm.dla.mil/> .

If the offeror elects ANSI/VAN order transmission, DLA will send Electronic Data Interchange (EDI) transaction sets at time of award. The contractor shall acknowledge receipt of transaction sets with a functional acknowledgement or order receipt message within 24 hours. If the award transaction set is received on a weekend or Federal holiday, the acknowledgement must be received on the next working day. This acknowledgement will confirm that the contractor's interface with the system is working as needed for contract ordering.

Note: Information regarding EDI, ANSI X12 transactions, and DLA transaction services approved VANs can be obtained from the DAAS web site by going to <https://www.transactionservices.dla.mil/daashome/edi-vanlist-dla.asp>.

**Procurement Note: L06 Agency Protests (DEC 2016)**

Interested parties may file an agency level protest with the contracting officer or may request an independent review by the chief of the contracting office (CCO). Independent review by the CCO is an alternative to consideration by the contracting officer and is not available as an appellate review of a contracting officer decision on a protest previously filed with the contracting officer. Absent a clear indication of the intent to file an agency level protest with the CCO for independent review, protests will be presumed to be protests to the contracting officer.

**52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data (Oct 2010)**

*(a) Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

*(i) Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

*(ii) Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include --

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the

established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The offeror shall prepare and submit certified cost or pricing data, and data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of Provision)

*Alternate IV (Oct 2010).* As prescribed in [15.408\(1\)](#), replace the text of the basic provision with the following:

(a) Submission of certified cost or pricing data is not required.

(b) Provide information described below: During the price evaluation phase of the proposal review process, the Contracting Officer may at her discretion require data from offerors that is not certified

cost or pricing data. Said data, as collected in accordance with FAR 15.403-3, will be used for purposes of determining an offeror's prices fair and reasonable. This data will not be used as part of a cost or price realism analysis as that analysis is not required, nor permitted, under the terms of this solicitation. The Contracting Officer retains full discretion over the type of data requested as well as the specific format that said data should adhere to. Both of these considerations will be addressed at the time of the Contracting Officer's request.

[Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403-3.]

<b>52.216-1      Type of Contract (Apr 1984)</b>
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The Government contemplates award of a Indefinite Delivery/Indefinite Quantity /Fixed Price with Economic Price Adjustment contract resulting from this solicitation

<b>252.229-7001      Tax Relief – Basic (Sep 2014) DFARS</b>
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- (a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:  
NAME OF TAX: \_\_\_\_\_ RATE (PERCENTAGE): \_\_\_\_\_
- (b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.
- (c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

<b>252.243-7002      Requests for Equitable Adjustment (Dec 2012) DFARS</b>
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- a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been

reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

- (b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

- (c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including:
- (1) Certified cost or pricing data, if required, in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and
  - (2) Data other than certified cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.
- (d) The certification requirement in paragraph (b) of this clause does not apply to:
- (1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or
  - (2) Final adjustments under an incentive provision of the contract.

<b>FEDERAL FOOD, DRUG AND COSMETIC ACT-WHOLESALE MEAT ACT</b>
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(a) The Contractor warrants that the supplies delivered under this contract comply with the Federal Food, Drug and Cosmetic Act and the Wholesome Meat Act and regulations promulgated there under. This warranty will apply regardless of whether or not the supplies have been:

- (1) Shipped in interstate commerce,
- (2) Seized under either Act or inspected by the Food and Drug Administration or Department of Agriculture.
- (3) Inspected, accepted, paid for or consumed, or any or all of these, provided however, that the supplies are not required to comply with requirements of said Acts and regulations promulgated there under when a specific paragraph of the applicable specification directs otherwise and the supplies are being contracted for military rations, not for resale.

(b) The Government shall have six months from the date of delivery of the supplies to the government within which to discover a breach of this warranty. Notwithstanding the time at which

such breach is discovered, the Government reserves the right to give notice of breach of this warranty at any time within this six-month period or within 30 days after expiration of such period, and any such notice shall preserve the rights and remedies provided herein.

(c) Within a reasonable time after notice to the Contractor of breach of this warranty, the Government may, at its election:

(1) Retain all or part of the supplies and recover from the Contractor, or deduct from the contract price, a sum the Government determines to be equitable under the circumstances;

(2) Return or offer to return all or part of the supplies to the Contractor in place and recover the contract price and transportation, handling, inspection and storage costs expended therefore; provided, that if the supplies are seized under either Act or regulations promulgated there under, such seizure, at Government option, shall be deemed a return of supplies within the meaning of this clause and thereby allow the government to pursue the remedy provided herein. Failure to agree to any deduction or recovery provided herein shall be a dispute within the meaning of the clause of this contract entitled "Disputes".

(d) The rights and remedies provided by this clause shall not be exclusive and are in addition to other rights and remedies provided by law or under this contract, nor shall pursuit of a remedy herein or by law either jointly, severally or alternatively, whether simultaneously or at different times, constitute an election of remedies.

<http://www.fda.gov/Food/FoodDefense/default.htm>

[http://www.dla.mil/Portals/104/Documents/TroopSupport/Subsistence/FoodSafety/FoodQuality/food\\_defense\\_check.pdf](http://www.dla.mil/Portals/104/Documents/TroopSupport/Subsistence/FoodSafety/FoodQuality/food_defense_check.pdf)

Any warehouse/storage facility used by the Prime Vendor to store food products intended for DLA customers must be inspected for sanitation and food defense compliance during Joint Quality Audits performed by USDA-AMS' and DLA Troop Support 's Quality Auditors or by USDA-AMS's Auditors as requested/directed by DLA.

Note: If the Prime Vendor stores, distributes, processes, and/or ships fresh fruits and vegetables (i.e. produce) to DLA customers, the USDA Guidance for fresh fruits and vegetables is the USDA-AMS Good Agricultural Practices (GAP) Verification Directory or the USDA-AMS Good Handling Practices (GHP)/Verification Directory for fresh fruits and vegetables. As applicable, a Hazard Analysis and Critical Control Point (HACCP) Audit will be performed if a fresh-cut operation is performed at the Prime Vendor's facility. Bulk Fresh fruits and vegetable suppliers must be inspected and listed under the USDA-AMS GAP and/or the GHP Directory.

<http://www.fda.gov/Food/FoodDefense/default.htm>

<http://www.dla.mil/Portals/104/Documents/TroopSupport/Subsistence/FoodSafety/FoodQuality/food>

## WARRANTIES

The supplies furnished under the resultant contract(s) shall be covered by the most favorable commercial warranties that the Prime Vendor gives to any of its customers, whether Government or commercial. The supplies and the rights and remedies provided therein are in addition to, and do not limit, any rights afforded to the Government by FAR 52.212-4(o) "Warranty", "Contract Terms and Conditions-Commercial Items"(OCT 2018) and any addendum contained in the solicitation. The Prime Vendor will provide a copy of its most favorable commercial warranty to the Contracting Officer after award.

### **ADDENDUM TO FAR 52.212-4 – Contract Terms and Conditions – Commercial Items**

#### **Contract Terms and Conditions -- Commercial Items (OCT 2018)**

(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 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.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include --

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

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

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

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

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

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

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, 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.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) 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.

(1) 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.

(2) 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.

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

(4) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the 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—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

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

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

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

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

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

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

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

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

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

(A) The date fixed under this contract.

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

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

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

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

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

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

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

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

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

(o) *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.

(p) *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.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 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.

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

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Reserved

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

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

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of Clause)

*Alternate I (Jan 2017)* 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.

(2) 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.

(3) 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.

(4) 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—

(A) 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

(B) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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—

(i) *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.

(ii) *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—

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

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

(iii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) 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

(E) 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:

(i) 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.

(E) 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.

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

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

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

(ii) Materials.

(A) If the Contractor furnishes materials that meet the definition of a commercial item 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--

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) 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—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) 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.

(C) 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.

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

(1) *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'."] ]

(2) *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'."] ]

(2) *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.

(3) *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.

(4) *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):

(i) Records that verify that the employees whose time has been included in any invoice met the qualifications for the labor categories specified in the contract.

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

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

(B) The Contractor's timekeeping procedures;

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

(D) 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—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *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—

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

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

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

(6)

(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.

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

(iii) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR 32.60702).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

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

(A) The date fixed under this contract.

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

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

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

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

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

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(viii) 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.

(7) *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.

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

(ii) 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.

(iii) 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.

(8) *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.



(9) *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.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid 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.

(m) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) Payments of this clause, but the "hourly rate" for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (a)(4) of this clause, the portion of the "hourly rate" attributable to profit shall be 10 percent. In the event of termination for cause, 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.

#### **52.212-1 -- Instructions to Offerors -- Commercial Items. (DEVIATION 2018-00018)**

As prescribed in [12.301\(b\)\(1\)](#), insert the following provision:

#### **Instructions to Offerors -- Commercial Items (Oct 2018)**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show --

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that

fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.*

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)

(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.



(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)

(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--

GSA Federal Supply Service Specifications Section Suite 8100  
470 L'Enfant Plaza, SW Washington, DC 20407  
Telephone (202) 619-8925  Facsimile (202) 619-8978 .

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites--

(i) ASSIST (<https://assist.dla.mil/online/start/> ).


(ii) Quick Search (<http://quicksearch.dla.mil/>).

(iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard ( <https://assist.dla.mil/wizard/index.cfm> );

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179 , Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4 Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697/2197, Facsimile (215) 697-1462 .

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Unique entity identifier.* (Applies to all offers exceeding \$3,500, and offers of \$3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see subpart 32.11) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at [www.sam.gov](http://www.sam.gov) for establishing the unique entity identifier.

**Class Deviation 2018-O0018—Micro-Purchase Threshold, Simplified Acquisition Threshold, and Special Emergency Procurement Authority. Effective August 31, 2018. This deviation remains in effect until it is incorporated into the FAR or DFARS, or otherwise rescinded**

*(j) Unique entity identifier. (Applies to all offers exceeding the micro-purchase threshold and offers at any dollar value if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) \* \* \**

(k) Reserved.

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(2) The overall evaluated cost or price and technical rating of the successful and debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

ECONOMIC PRICE ADJUSTMENT (EPA) – ACTUAL MATERIAL COSTS FOR  
SUBSISTENCE DELIVERED PRICE BUSINESS MODEL – DLA TROOP SUPPORT  
SUBSISTENCE PRIME VENDOR (SPV) CONTIGUOUS UNITED STATES (CONUS), ALASKA,  
AND HAWAII

(a) Warranties. For the portion of the schedule that is covered by this EPA language, the Contractor warrants that—

(1) Contract unit prices covered by this contract do not include allowances for any portion of the contingency covered by this EPA language; and

(2) Price adjustments invoiced under this contract shall be computed in accordance with the provisions of this EPA language.

(b) Definitions. As used throughout this EPA language, the term:

(1) “Private label holder” means:

- (i) A manufacturer or grower with whom the contractor holds an ownership and/or financial interest, or ownership and/or financial interest in a specific item(s) produced by a manufacturer or grower; or
- (ii) An entity holding an intellectual property interest, whether by ownership or license, in the label under which product is being sold in the commercial marketplace; or
- (iii) An entity holding exclusive marketing and/or sales authority of a product, or one holding property rights in a proprietary product formula.

(2) “Redistributor” means an entity independent of the contractor from which the contractor purchases product for purposes of consolidating quantities and/or obtaining a competitive delivered price.

(3) “Standard Freight” means the published list price or prevailing market rate for transportation of subsistence and food service operating supplies, i.e. the transportation charge for delivery from the manufacturer/grower/private label holder or redistributor to the SPV Contractor. This may include

inter-division transfers between the SPV Contractor's warehouses provided the delivered price (inclusive of standard freight) of a product at a given time is identical to the delivered price of the same product at the same time to other commercial customers in the SPV Contractor's electronic purchasing system.

(i) In the event the SPV Contractor picks up product free on board (f.o.b.) origin from a manufacturer/grower/ private label holder, or arranges for delivery transportation from a third party source other than the manufacturer/grower/private label holder, the standard freight charge shall be based on market tariffs/conditions and shall not exceed the lesser of:

(A) The manufacturer/grower/private label holder's or manufacturer/grower/private label holder's carrier's freight price normally payable by the SPV Contractor for inbound shipments of such products and quantities to the Contractor's distribution point; or

(B) An average price based on market conditions for freight in the same market for the same type of freight service for like products, shipping methods and quantities.

(ii) In rare circumstances, and only with the Contracting Officer's written approval, the SPV Contractor may use drop shipments, i.e. the product is shipped directly from the manufacturer/grower / private label holder to the customer without the SPV Contractor taking possession. This may involve transportation charges using non-standard freight such as FedEx, United Parcel Service (UPS), or the United States (U.S.) Postal Service. In such instances the Contracting Officer will determine price reasonableness on the unit price inclusive of freight.

(4) "Contract unit price" means the total price per unit charged to DLA Troop Support for a product delivered to DLA Troop Support's customers. The Contract unit price consists of three components: delivered price plus distribution price less Government rebates and discounts. The unit price sum of the three component prices shall be rounded up or down as applicable, to the nearest cent to determine the final Contract unit price.

(5) Delivered price.

(i) Delivered price" means the most recent manufacturer, grower, or private label holder commercial price per unit to the Contractor, inclusive of all standard freight, that is input in the contractor's purchasing system as the starting basis for its pricing to customers prior to the application of any specific distribution fees, rebates, discounts, limited discounts, or other financial agreements with the Contractor's customers. The delivered price shall be based on f.o.b. destination delivered using standard freight. The delivered price shall exclude all costs that are to be covered in the distribution price. The SPV Contractor warrants that the delivered price to its delivering warehouse of a product sold at any given time by the SPV Contractor to DLA Troop Support customers is identical to the delivered price of such product sold at the same time to its other customers.



(A) Exception: For mandatory source items, the delivered price shall be limited to the nonprofit agency's price for product as set in accordance with applicable law, plus standard freight.

(B) Exception: A redistributor's price for a specific manufacturer/grower/private label holder's product (or stock keeping unit (SKU)) may be used as long as the redistributor's price for the quantity ordered is equal to or lower than the manufacturer's/ grower's/ private label holder's current price inclusive of Government rebates and discounts (as defined below). Supporting documentation (published price list, manufacturer letter/email, or similar proof of price comparison) may be required. The determination that the supporting documentation is sufficient to establish the manufacturer's/ grower's/ private label holder's current price rests solely with the Contracting Officer.

(C) Exception: Standard freight may not apply to drop shipments and f.o.b. origin pickups.

(ii) The Contractor shall utilize best commercial practices in purchasing its food items under this contract, to include seeking and using competition to the maximum extent practicable for all purchases and purchasing in the most economical order quantities and terms and conditions.

(6) "Distribution Price(s)" means the firm fixed price portion of the Contract Unit price, offered as a dollar amount per unit of issue, rounded up or down to the nearest cent. The distribution price is the only method for the Contractor to bill the Government for all aspects of contract performance other than delivered price; including but not limited to, the performance requirements of the statement of work (SOW) for the applicable SPV solicitation and resulting contract. As detailed above in paragraph (5), delivered price is distinct from and not to be included in the distribution price. For both drop shipments and Government pick-ups, the Contracting Officer may negotiate a reduced distribution price with the Contractor since the Contractor is not handling the product.

(7) "Government rebates and discounts" means all rebates, discounts, and limited discounts designated for the Government, including National Allowance Pricing Agreements (NAPA) discounts, food show discounts, early payment discounts (other than qualifying early payment discounts as defined in the Rebates, Discounts and Price Related Provisions section of the solicitation), and any other rebates, discounts, or similar arrangements designated by the manufacturer/grower/ private label holder or redistributor to be passed to the Government or passed to all customers without specific designation. In accordance with other provisions of the contract (and subject to any applicable exceptions in those provisions), all Government rebates and discounts shall be passed to the Government via a reduced catalog price (i.e. "off invoice"). Any Government rebates and discounts that must be passed to the Government and which cannot be applied as an up-front price reduction must be submitted via check payable to the U.S. Treasury, with an attached itemized listing of all customer purchases by line item to include contract number, call number, purchase order number and contract line item number (CLIN).

(8) "Ordering catalog" means the electronic listing of items and their corresponding Contract unit prices available for ordering under this contract.

(9) "Ordering Week" means from Sunday at 12:01 AM through the following Saturday until midnight (Eastern Time ET, standard or daylight as applicable).

(c) Price adjustments.

(1) General.

(i) All Contract unit prices shall be fixed and remain unchanged until changed pursuant to this EPA language or other applicable provision of the contract. Only the delivered price component of the Contract unit price is subject to adjustment under this EPA language. After the first ordering week, if the Contractor's delivered price changes for any or all Contract unit prices, the Contract unit price shall be changed in the next week's ordering catalog upon the Contractor's request, submitted in accordance with paragraph (iii) below, by the same dollar amount of the change in the delivered price, subject to the limitations in paragraph (d). The price change shall be effective at the beginning of the next ordering week. All ordering catalog unit prices computed in accordance with this EPA language and in effect when an order is placed shall remain in effect for that order through delivery. DLA Troop Support will be charged the Contract unit price in effect at the time of each order regardless of any changes in the unit price occurring in any subsequent ordering week.

(ii) Catalog delivered prices must be reflective of the prime vendor's last receipt price (the price of the stock most recently received into SPV contractor's inventory).

(iii) Updates to the delivered price: All notices and requests for new item delivered prices and price changes shall be submitted weekly, no later than [contracting officer fill in time] Eastern Time on [contracting officer fill in day], to be effective in the following ordering week's ordering catalog prices. The delivered price shall have any and all Government rebates and discounts subtractions made prior to presenting the delivered price to DLA Troop Support. The Contractor shall notify the Contracting Officer of its notice/request in the form of an electronic data interchange (EDI) 832 transaction set. The change notice shall include the Contractor's adjustment in the delivered price component of the applicable Contract unit price. Upon the Contracting Officer's acceptance of such EDI 832 price changes in accordance with paragraph (v) below, the price change transaction sets will post in the next week's ordering catalog and each Contract unit price shall be changed by the same dollar amount of the change in the delivered price in the next week's ordering catalog.

(iv) All price changes, and catalog contract prices, are subject to review by the Government. The Contracting Officer may at any time require the submission of supporting data to substantiate any requested price change or the requested continuation of the pre-existing price for any item, including prices applicable to prior ordering weeks. Upon notice from the Contracting Officer that supporting

data is required, the Contractor shall promptly furnish to the Government all supporting data, including but not limited to, invoices, quotes, price lists, manufacturer/grower/private label holder documentation regarding Government rebates and discounts, and any other substantiating information requested by the Contracting Officer.

(v) Price change requests that the Contracting Officer questions or finds to be inconsistent with the requirements of this EPA language shall not be posted until the Contracting Officer specifically authorizes the posting. If the Contracting Officer does not notify the Contractor by close of business Eastern Time each [contracting officer fill in day] that a price or a price change request is being questioned or has been found to be erroneous, the price change(s) will post to the ordering catalog effective the beginning of the following ordering week. The posting of updated prices in the ordering catalog, calculated in accordance with this EPA language, constitutes a modification to this contract. No further contract modification is required to effect this change. Any changes that post to the ordering catalog do not constitute a waiver of any of the rights delineated elsewhere in the contract.

(vi) Should the Contracting Officer determine that, or question whether a price change request contained an erroneous unit price or price change, or cannot otherwise determine the changed price(s) to be fair and reasonable, such as when the changed price(s) is(are) higher than lower delivered prices for items of comparable quality which are reasonably available to the Government or Contractor from other sources, the Contracting Officer will so advise the Contractor, prior to close of business Eastern Time on [contracting officer fill in day]. If the Contracting Officer cannot determine a price fair and reasonable, and the Contracting Officer and the Contractor cannot negotiate a fair and reasonable price, the Contracting Officer may reject any price change and direct in writing that the item in question be removed from the Contractor's ordering catalog, without Government liability. The Contracting Officer may subsequently remove any such item from the ordering catalog if the Contractor fails to remove it. The Government has the right to procure such removed items from any alternate source of supply, and the failure of the Contractor to supply such item may be considered negatively in any evaluation of performance.

(vii) In the event of a price change not posting or an ordering catalog contract unit price not computed in accordance with this EPA language, resulting in an incorrectly increased or decreased Contract unit price, upon discovery of such event the Contractor shall promptly notify the Contracting Officer in writing and promptly thereafter correct its ordering catalog and submit a refund including interest for any amounts paid to the Contractor resulting from the erroneous price. In the event of an erroneous price decrease in the ordering catalog, if the contractor can demonstrate to the satisfaction of the Contracting Officer that the error did not result from the fault or negligence of the Contractor, the Contractor may submit a request for equitable adjustment for consideration by the Contracting Officer.

(2) Limitations. All adjustments under this EPA language shall be limited to the effect on contract unit prices of actual increases or decreases in the delivered prices for material. There shall be no upward adjustment for—

(i) Supplies for which the delivered price is not affected by such changes;

(ii) Changes in the quantities of materials; and

(iii) Increases in unit prices that the Contracting Officer determines are computed incorrectly (i.e. not adhering to the Contract unit price definition in this EPA language) and/or increases in unit prices that the Contracting Officer determines are not fair and reasonable.

(3) If the Contracting Officer rejects a proposed adjustment for an item because the adjusted unit price cannot be determined fair and reasonable, the Contractor shall have no obligation to fill future orders for such item as of the effective date of the proposed adjustment unless such item is subsequently added to the contract at a Unit Price that is determined fair and reasonable. Alternately, the item may be retained on the catalog at the prior (unadjusted) price for as long as both parties agree to do so.

(d) Upward ceiling on economic price adjustment. The aggregate of contract delivered price increases for each item under this EPA language during the contract period inclusive of any option period(s) shall not exceed [contracting officer fill in percentage] percent (%) for all items except fresh fruits and vegetables (FF&V) and [contracting officer fill in percentage] percent (%) for fresh fruits and vegetables (FF&V) of the initial contract delivered price, except as provided below:

(1) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this EPA language will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. In the event the latest actual market price for an item would result in a contract unit price that will exceed the allowable ceiling price under the contract, then the Contractor shall immediately notify the Contracting Officer in writing or via its EDI 832 price change request and separate email no later than the time specified in paragraph (c)(1)(iii) above. With either such notification the Contractor shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(2) If an actual increase in the delivered price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill future orders for such items, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing. After evaluation of a requested actual price

increase, if the Contracting Officer authorizes the change in the Contract unit price, the Contractor shall submit an EDI 832 price change. The price change shall be posted for the following week's ordering catalog.

(e) Downward limitation on economic price adjustments. There is no downward limitation on the aggregated percentage of decreases that may be made under this EPA language.

(f) Examination of records. The Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents and other data, to include commercial sales data, that the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this EPA language. Such examination may occur up to twice a year (except as provided for below) until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier. These will normally involve Government selection of a statistically significant sample size of invoices/records to examine based on the number of line items on the specific contract catalog. If an examination of records reveals irregularities, further examinations and/or a larger sample size may be required. In addition to normal examination, the Government may conduct additional examinations at the Contracting Officer's discretion.

(g) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required or authorized by this EPA language.

(h) Disputes. Any dispute arising under this EPA language shall be determined in accordance with the "Disputes" clause of the contract.