PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 41 U.S.C. 1707.

Source: 76 FR 42057, July 18, 2011, unless otherwise noted.

Subpart 1052.2—Texts of Provisions and Clauses

1052.201-70 Contracting Officer's Representative (COR) appointment and authority.

1052.209-70 Notice and Consent to Disclose and Use of Taxpayer Return Information.

1052.210-70 Contractor publicity.

1052.219-18 Notification of competition limited to eligible 8(a) concerns—Alternate III (Deviation) (MAY 1998).

1052.219-72 Section 8(a) direct awards.

1052.219-73 Department of the Treasury Mentor-Protégé Program.

1052.219-75 Mentor Requirements and Evaluation.

1052.222-70 Minority and Women Inclusion.

1052.228-70 Insurance requirements.

1052.232-70 Limitation of Government's obligation.

1052.232-7003 Electronic submission of payment requests.

Parent topic: SUBCHAPTER H—CLAUSES AND FORMS

Subpart 1052.2—Texts of Provisions and Clauses

1052.201-70 Contracting Officer's Representative (COR) appointment and authority.

As prescribed in 1001.670-6, insert the following clause:

Contracting Officer's Representative (COR) Appointment and Authority (APR 2015)

(a) The COR is _____ [insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COR identified above, or a representative designated in writing. The term “technical direction” includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that

tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COR does not have authority to issue technical direction that:

(1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;

(2) Constitutes a change as defined in the clause entitled “Changes”;

(3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;

(4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;

(5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or

(6) Directs, supervises or otherwise controls the actions of the Contractor's employees.

(d) Technical direction may be oral or in writing. The COR must confirm oral direction in writing within five workdays, with a copy to the Contracting Officer.

(e) The Contractor shall proceed promptly with performance resulting from the technical direction issued by the COR. If, in the opinion of the Contractor, any direction of the COR or the designated representative falls within the limitations of (c) above, the Contractor shall immediately notify the Contracting Officer no later than the beginning of the next Government work day.

(f) Failure of the Contractor and the Contracting Officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled “Disputes.”

(End of clause)

1052.209-70 Notice and Consent to Disclose and Use of Taxpayer Return Information.

As prescribed in 1009.7005, insert the following provision:

Notice and Consent To Disclose and Use of Taxpayer Return Information (NOV 2017)

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

Authorized representative(s) of the offeror means the person(s) identified to the Internal Revenue Service (IRS) within the consent to disclose by the offeror as authorized to represent the offeror in disclosure matters pertaining to the offer.

Delinquent Federal tax liability means 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.

Tax check means an IRS process that accesses and uses taxpayer return information to support the

Government's determination of an offeror's eligibility to receive an award, including but not limited to implementation of the statutory prohibition of making an award to corporations that have an unpaid Federal tax liability (see FAR 9.104-5(b)).

(b) *Notice.* Pursuant to 26 U.S.C. 6103(a) taxpayer return information, with few exceptions, is confidential. Under the authority of 26 U.S.C. 6103(h)(1), officers and employees of the Department of the Treasury, including the IRS, may have access to taxpayer return information as necessary for purposes of tax administration. The Department of the Treasury has determined that an IRS contractor's compliance with the tax laws is a tax administration matter and that the access to and use of taxpayer return information is needed for determining an offeror's eligibility to receive an award, including but not limited to implementation of the statutory prohibition of making an award to corporations that have an unpaid Federal tax liability (see FAR 9.104-5).

(1) The performance of a tax check is one means that will be used for determining an offeror's eligibility to receive an award in response to this solicitation (see FAR 9.104). As a result, the offeror may want to take steps to confirm it does not have a delinquent Federal tax liability prior to submission of its response to this solicitation. If the offeror recently settled a delinquent Federal tax liability, the offeror may want to take steps to obtain information in order to demonstrate the offeror's responsibility to the contracting officer (see FAR 9.104-5).

(c) The offeror shall execute the consent to disclosure provided in paragraph (d) of this provision and include it with the submission of its offer. The consent to disclosure shall be signed by an authorized person as required and defined in 26 U.S.C. 6103(c) and 26 CFR 301.6103(c)-1(e)(4).

(d) Consent to disclosure. I hereby consent to the disclosure of taxpayer return information (as defined in 26 U.S.C. 6103(b)(2)) as follows:

The Department of the Treasury, Internal Revenue Service, may disclose the results of the tax check conducted in connection with the offeror's response to this solicitation, including taxpayer return information as necessary to resolve any matters pertaining to the results of the tax check, to the authorized representatives of [*insert OFFEROR NAME*] on this offer.

I am aware that in the absence of this authorization, the taxpayer return information of [*insert OFFEROR NAME*] is confidential and may not be disclosed, which subsequently may remove the offer from eligibility to receive an award under this solicitation.

I consent to disclosure of taxpayer return information to the following person(s):

I am aware that in the absence of this authorization, the taxpayer return information of [*insert OFFEROR NAME*] is confidential and may not be disclosed, which subsequently may remove the offer from eligibility to receive an award under this solicitation.

I consent to disclosure of taxpayer return information to the following person(s):

[*insert PERSON(S) NAME AND CONTACT INFORMATION*]:

I certify that I have the authority to execute this consent on behalf of [*insert OFFEROR NAME*].

Offeror Name:

Offeror Taxpayer Identification Number:

Offeror Address:

Name of Individual Executing Consent:

Title of Individual Executing Consent:

Signature:

Date:

(End of provision)

1052.210-70 Contractor publicity.

As prescribed in 1009.204-70, insert the following clause:

Contractor Publicity (APR 2015)

The Contractor, or any entity or representative acting on behalf of the Contractor, shall not refer to the supplies or services furnished pursuant to the provisions of this contract in any news release or commercial advertising, or in connection with any news release or commercial advertising, without first obtaining explicit written consent to do so from the Contracting Officer. Should any reference to such supplies or services appear in any news release or commercial advertising issued by or on behalf of the Contractor without the required consent, the Government shall consider institution of all remedies available under applicable law, including 31 U.S.C. 333, and this contract. Further, any violation of this clause may be considered as part of the evaluation of past performance.

(End of clause)

1052.219-18 Notification of competition limited to eligible 8(a) concerns—Alternate III (Deviation) (MAY 1998).

In accordance with 1019.811-3(d)(3), substitute the following for the paragraph (c) in FAR 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

1052.219-72 Section 8(a) direct awards.

As prescribed in 1019.811-3(f), insert the following clause:

8(a) Business Development Program Awards (JUN 2003)

(a) This purchase/delivery/task order or contract is issued by the contracting activity directly to the 8(a) program participant/contractor pursuant to the Partnership Agreement between the Small Business Administration (SBA) and the Department of the Treasury. However, the Small Business

Administration is the prime contractor and retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) Business Development program. The cognizant SBA district office is:

[*To be completed by the contracting officer at the time of award*]

(b) The contracting officer is responsible for administering the purchase/delivery/task order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase/delivery/task order or contract, to include providing the cognizant SBA district office with a signed copy of the purchase/delivery/task order or contract award within 15 days of the award. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and,

(2) to adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting.

(End of clause)

1052.219-73 Department of the Treasury Mentor-Protégé Program.

As prescribed in 1019.202-70.(p), insert the following clause:

Department of the Treasury Mentor-Protégé Program (JUN 2003)

(a) Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protégé Program. Mentor firms provide small business protégés with developmental assistance to enhance their capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses as defined in 13 CFR parts 121, 124, and 126.

Developmental assistance includes technical, managerial, financial, and other mutually beneficial assistance to aid protégé. Contractors interested in participating in the Program are encouraged to contact the Department of the Treasury Office of Small and Disadvantaged Business Utilization for further information.

(End of provision)

1052.219-75 Mentor Requirements and Evaluation.

As prescribed in 1019.202-70(p), insert the following clause:

Mentor Requirements and Evaluation (AUG 2011)

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's Office of Small and Disadvantaged Business Utilization (OSDBU) at the conclusion of the mutually agreed upon Program period, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé will formally brief the Department of the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.

(b) A mentor or protégé must notify the OSDBU and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program. A mentor firm must notify the OSDBU and the contracting officer upon receipt of a protégé's notice of withdrawal from the Program.

(c) Contracting officers may provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the non-price factors. If this incentive is used, the contracting officer shall include language in the solicitation indicating that this adjustment may occur.

(End of clause)

1052.222-70 Minority and Women Inclusion.

As prescribed in 1022.7000, insert the following clause:

Minority and Women Inclusion (JAN 2016)

(a) Contractor confirms its commitment to equal opportunity in employment and contracting. To implement this commitment, the Contractor shall ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce. The Contractor shall insert the substance of this clause in all subcontracts awarded under this contract whose dollar value exceeds $150,000. Within ten business days of a written request from the Contracting Officer, or such longer time as the Contracting Officer determines, and without any additional consideration required from the Agency, the Contractor shall provide documentation, satisfactory to the Agency, of the actions it (and as applicable, its subcontractors) has undertaken to demonstrate its good faith effort to comply with the aforementioned provisions. For purposes of this contract, “good faith effort” may include actions by the Contractor intended to identify and, if present, remove barriers to minority and women employment or expansion of employment opportunities for minorities and women within its workforce. Efforts to remove such barriers may include, but are not limited to, recruiting minorities and women, providing job-related training, or other activity that could lead to those results.

(b) The documentation requested by the Contracting Officer to demonstrate “good faith effort” may include, but is not limited to, one or more of the following—

(1) The total number of Contractor's employees, and the number of minority and women employees, by race, ethnicity, and gender (*e.g.,* an EEO-1);

(2) A list of subcontract awards under the contract that includes: Dollar amount, date of award, and subcontractor's race, ethnicity, and/or gender ownership status;

(3) Information similar to that required in paragraph (b)(1) of this clause, with respect to each subcontractor; and/or

(4) The Contractor's plan to ensure that minorities and women have appropriate opportunities to enter and advance within its workforce, including outreach efforts.

(c) Consistent with Section 342(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) (Dodd-Frank Act), a failure to demonstrate to the Director of the Agency's Office of Minority and Women Inclusion such good faith efforts to include minorities and women in the Contractor's workforce (and as applicable, the workforce of its subcontractors), may result in termination of the contract for default, other contractual remedies, or referral to the Office of Federal Contract Compliance Programs (OFCCP). Compliance with this clause does not, however, necessarily satisfy the requirements of Executive Order 11246, as amended, nor does it preclude OFCCP compliance evaluations and/or enforcement actions undertaken pursuant to that Executive Order.

(d) For purposes of this clause, the terms “minority,” “minority-owned business,” and “women-owned business” shall have the meanings set forth in Section 342(g) of the Dodd-Frank Act.

1052.228-70 Insurance requirements.

As prescribed in 1028.310-70 and 1028.311-2, insert a clause substantially as follows: The contracting officer may require additional kinds of insurance (*e.g.,* aircraft public and passenger liability, vessel liability) or higher limits of coverage.

Insurance (APR 2015)

In accordance with FAR clause 52.228-5, entitled “Insurance—Work on a Government Installation” [or FAR clause 52.228-7 entitled, “*Insurance—Liability to Third Persons”*], insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) *Worker's compensation and employer's liability.* The Contractor shall, as a minimum, meet the requirements specified at FAR 28.307-2(a).

(b) *General liability.* The Contractor shall, at a minimum, meet the requirements specified at FAR 28.307-2(b).

(c) *Automobile liability.* The Contractor shall, at a minimum, meet the requirements specified at FAR 28.307-2(c).

(End of clause)

1052.232-70 Limitation of Government's obligation.

As prescribed in 1032.770-7, insert the following clause. Contracting officers are authorized, in appropriate cases, to revise paragraph (a) of this clause to specify the work required under the contract, in lieu of using contract line item numbers as well as revise paragraph (c) of this clause to specify a different notification period and percentage. The 30-day period may be varied from 45, 60 to 90 days, and the 75 percent from 75 to 85 percent:

Limitation of Government's Obligation (NOV 2016)

(a) Funding is not currently available to fully fund this contract due to the Government operating under a continuing resolution (CR). The item(s) listed in the table below are being incrementally funded as described below. The funding allotted to these item(s) is presently available for payment and allotted to this contract. This table will be updated by a modification to the contract when additional funds are made available, if any, to this contract.

Contract line item number (CLIN)	CLIN total price	Funds allotted to the CLIN	Funds required for complete funding of the CLIN
	$	$	$
	$	$	$
	$	$	$
	$	$	$
Totals	$	$	$

(b) For the incrementally funded item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including any invoice payments to which the Contractor is entitled and reimbursement of authorized termination costs in the event of termination of those item(s) for the Government's convenience, does not exceed the total amount currently obligated to those item(s). The Contractor is not authorized to continue work on these item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the line items of the contract regardless of anything to the contrary in any other clause, including but not limited to the clause entitled “Termination for Convenience of the Government” or paragraph

(1) entitled “Termination for the Government's Convenience” of the clause at FAR 52.212-4, “Commercial Terms and Conditions Commercial Items.”

(c) Notwithstanding paragraph (h) of this clause, the Contractor shall notify the Contracting Officer in writing at least thirty days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the item(s) identified in paragraph (a) of this clause. The notification shall state the estimated date when that point will be reached and an estimate of additional funding, if any, needed to continue performance. The notification shall also advise the Contracting Officer of the estimated amount of additional funds required for the timely performance of the item(s) funded pursuant to this contract. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed upon substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the terms of this contract authorizing termination for the convenience of the Government. Failure to

make the notification required by this paragraph, whether for reasons within or beyond the Contractor's control, will not increase the maximum amount payable to the Contractor under paragraphs (a) and (b) of this clause.

(d) The Government may at any time prior to termination allot additional funds for the performance of the item(s) identified in paragraph (a) of this clause.

(e) The termination provisions of paragraphs (a) through (h) of this clause do not limit the rights of the Government under the clause entitled “Default” or “Termination for Cause.” The provisions of this clause are limited to the work and allotment of funds for the item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded.

(f) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the Government's termination for convenience terms set forth in this contract.

(g) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(h) The parties contemplate that the Government will allot funds to this contract from time to time as the need arises and as funds become available. There is no fixed schedule for providing additional funds.

(End of clause)

1052.232-7003 Electronic submission of payment requests.

As prescribed in 1032.7003, use the following clause:

Electronic Submission of Payment Requests (APR 2015)

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

(1) “*Payment request*” means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), “Content of Invoices” and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Invoice Processing Platform (IPP). Information regarding IPP, including IPP Customer Support contact information, is available at *www.ipp.gov* or any successor site.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with Treasury procedures.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of clause)