PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301-302, 6 U.S.C. 453b, 41 U.S.C. 1707, 41 U.S.C. 1702, 41 U.S.C. 1303(a)(2), 48 CFR part 1, subpart 1.3. and DHS Delegation Number 0702.

Source: 68 FR 67871, Dec. 4, 2003, unless otherwise noted.

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§ 3052.249-90 3052.249-90 Contract termination (USCG).

Parent topic: SUBCHAPTER H—CLAUSES AND FORMS

Subpart 3052.1—Instructions for Using Provisions and Clauses

3052.101 Using part 3052.

(b) Numbering.

(2)(i) Provisions or clauses that supplement the FAR.

(A) Agency-prescribed provisions and clauses permitted by HSAR and used on a standard basis (i.e., normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the HSAR. Component desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the CPO in accordance with (HSAR) 48 CFR 3001.304 for possible inclusion in the HSAR.

(B) Provisions and clauses used on a one-time basis (i.e., non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the Component. This authority is subject to:

(*1*) Evidence of legal counsel review in the contract file;

(*2*) Inserting these clauses in the appropriate sections of the uniform contract format; and

(*3*) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and HSAR.

Note to 3052.101:

The solicitation provisions and contract clauses matrix referencing all HSAR provisions and clauses is available at *https://www.dhs.gov/publication/hsar-provision-and-clause-matrix*.

Subpart 3052.2—Text of Provisions and Clauses

3052.203-70 Instructions for Contractor Disclosure of Violations.

As prescribed in (HSAR) 48 CFR 3003.1004(a), insert the following clause:

Instructions for Contractor Disclosure of Violations (SEP 2012)

When making a written disclosure under the clause at FAR 52.203-13, paragraph (b)(3), the Contractor may submit the disclosure to the Department of Homeland Security Office of Inspector General using the methods described at *https://www.oig.dhs.gov/hotline* or *https://www.oig.dhs.gov/reports/publications/annual/contractor-disclosu…*, and submit the disclosure electronically to the Department of Homeland Security Office of Inspector General. The Contractor shall provide a copy of the disclosure to the Contracting Officer by email or facsimile on the same business day as the submission to the Office of Inspector General. The Contractor shall provide the Contracting Officer a concurrent copy of any supporting materials submitted to the Office of Inspector General.

(End of clause)

3052.204-70 [Reserved]

3052.204-71 Contractor employee access.

As prescribed in (HSAR) 48 CFR 3004.470-4(a), insert the following clause with appropriate alternates:

Contractor Employee Access (JUL 2023)

(a) *Controlled Unclassified Information (CUI)* is any information the Government creates or possesses, or an entity creates or possesses for or on behalf of the Government (other than classified information) that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls. This definition includes the following CUI categories and subcategories of information:

(1) Chemical-terrorism Vulnerability Information (CVI) as defined in 6 CFR part 27, “Chemical Facility Anti-Terrorism Standards,” and as further described in supplementary guidance issued by an authorized official of the Department of Homeland Security (including the Revised Procedural Manual “Safeguarding Information Designated as Chemical-Terrorism Vulnerability Information” dated September 2008);

(2) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (title XXII, subtitle B of the Homeland Security Act of 2002 as amended through Pub. L. 116-283), PCII's implementing regulations (6 CFR part 29), the PCII Program Procedures Manual, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security, the PCII Program Manager, or a PCII Program Manager Designee;

(3) Sensitive Security Information (SSI) as defined in 49 CFR part 1520, “Protection of Sensitive Security Information,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or designee), including Department of Homeland Security MD 11056.1, “Sensitive Security Information (SSI)” and, within the Transportation Security Administration, TSA MD 2810.1, “SSI Program”;

(4) Homeland Security Agreement Information means information the Department of Homeland Security receives pursuant to an agreement with State, local, Tribal, territorial, or private sector partners that is required to be protected by that agreement. The Department receives this information in furtherance of the missions of the Department, including, but not limited to, support of the Fusion Center Initiative and activities for cyber information sharing consistent with the Cybersecurity Information Sharing Act of 2015;

(5) Homeland Security Enforcement Information means unclassified information of a sensitive nature lawfully created, possessed, or transmitted by the Department of Homeland Security in furtherance of its immigration, customs, and other civil and criminal enforcement missions, the unauthorized disclosure of which could adversely impact the mission of the Department;

(6) International Agreement Information means information the Department of Homeland Security receives that is required to be protected by an information sharing agreement or arrangement with a foreign government, an international organization of governments or any element thereof, an international or foreign public or judicial body, or an international or foreign private or non-governmental organization;

(7) Information Systems Vulnerability Information (ISVI) means:

(i) Department of Homeland Security information technology (IT) systems data revealing infrastructure used for servers, desktops, and networks; applications name, version, and release; switching, router, and gateway information; interconnections and access methods; and mission or business use/need. Examples of ISVI are systems inventories and enterprise architecture models. Information pertaining to national security systems and eligible for classification under Executive Order 13526 will be classified as appropriate; and/or

(ii) Information regarding developing or current technology, the release of which could hinder the objectives of the Department, compromise a technological advantage or countermeasure, cause a denial of service, or provide an adversary with sufficient information to clone, counterfeit, or circumvent a process or system;

(8) Operations Security Information means Department of Homeland Security information that could be collected, analyzed, and exploited by a foreign adversary to identify intentions, capabilities, operations, and vulnerabilities that threaten operational security for the missions of the Department;

(9) Personnel Security Information means information that could result in physical risk to Department of Homeland Security personnel or other individuals whom the Department is responsible for protecting;

(10) Physical Security Information means reviews or reports illustrating or disclosing facility infrastructure or security vulnerabilities related to the protection of Federal buildings, grounds, or property. For example, threat assessments, system security plans, contingency plans, risk management plans, business impact analysis studies, and certification and accreditation documentation;

(11) Privacy Information includes both Personally Identifiable Information (PII) and Sensitive Personally Identifiable Information (SPII). PII refers to information that can be used to distinguish or trace an individual's identity, either alone, or when combined with other information that is linked or linkable to a specific individual; and SPII is a subset of PII that if lost, compromised, or disclosed without authorization could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. To determine whether information is PII, DHS will perform an assessment of the specific risk that an individual can be identified using the information with other information that is linked or linkable to the individual. In performing this assessment, it is important to recognize that information that is not PII can become PII whenever additional information becomes available, in any medium or from any source, that would make it possible to identify an individual. Certain data elements are particularly sensitive and may alone present an increased risk of harm to the individual.

(i) Examples of stand-alone PII that are particularly sensitive include: Social Security numbers (SSNs), driver's license or State identification numbers, Alien Registration Numbers (A-numbers), financial account numbers, and biometric identifiers.

(ii) Multiple pieces of information may present an increased risk of harm to the individual when combined, posing an increased risk of harm to the individual. SPII may also consist of any grouping of information that contains an individual's name or other unique identifier plus one or more of the following elements:

(A) Truncated SSN (such as last 4 digits);

(B) Date of birth (month, day, and year);

(C) Citizenship or immigration status;

(D) Ethnic or religious affiliation;

(E) Sexual orientation;

(F) Criminal history;

(G) Medical information; and

(H) System authentication information, such as mother's birth name, account passwords, or personal identification numbers (PINs).

(iii) Other PII that may present an increased risk of harm to the individual depending on its context, such as a list of employees and their performance ratings or an unlisted home address or phone number. The context includes the purpose for which the PII was collected, maintained, and used. This assessment is critical because the same information in different contexts can reveal additional information about the impacted individual.

(b) *Information Resources* means information and related resources, such as personnel, equipment, funds, and information technology.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted or subject to other investigations as required. All Contractor employees requiring recurring access to government

facilities or access to CUI or information resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to CUI. The Contractor shall access and use CUI only for the purpose of furnishing advice or assistance directly to the Government in support of the Government's activities, and shall not disclose, orally or in writing, CUI for any other purpose to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized to access CUI, the Contractor shall ensure that these persons receive initial and refresher training concerning the protection and disclosure of CUI. Initial training shall be completed within 60 days of contract award and refresher training shall be completed every 2 years thereafter.

(f) The Contractor shall include this clause in all subcontracts at any tier where the subcontractor may have access to government facilities, CUI, or information resources.

(End of clause)

Alternate I (JUL 2023)

When the contract will require Contractor employees to have access to information resources, add the following paragraphs:

(g) Before receiving access to information resources under this contract, the individual must complete a security briefing; additional training for specific categories of CUI, if identified in the contract; and any nondisclosure agreement furnished by DHS. The Contracting Officer's Representative (COR) will arrange the security briefing and any additional training required for specific categories of CUI.

(h) The Contractor shall have access only to those areas of DHS information resources explicitly stated in this contract or approved by the COR in writing as necessary for performance of the work under this contract. Any attempts by Contractor personnel to gain access to any information resources not expressly authorized by the terms and conditions in this contract, or as approved in writing by the COR, are strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.

(i) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the Contractor performs business for DHS. It is not a right, a guarantee of access, a condition of the contract, or government-furnished equipment (GFE).

(j) Contractor access will be terminated for unauthorized use. The Contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management, or maintenance of Department IT systems under the contract, unless a waiver has been granted by the Head of the Component or designee, with the concurrence of both the Department's Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their

designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:

(1) There must be a compelling reason for using this individual as opposed to a U.S. citizen; and

(2) The waiver must be in the best interest of the Government.

(l) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the Contracting Officer.

(End of clause)

Alternate II (JUL 2023)

When the Department has determined contract employee access to controlled unclassified information or Government facilities must be limited to U.S. citizens and lawful permanent residents, but the contract will not require access to information resources, add the following paragraphs:

(g) Each individual employed under the contract shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by a Permanent Resident Card (USCIS I-551). Any exceptions must be approved by the Department's Chief Security Officer or designee.

(h) Contractors shall identify in their proposals, the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the Contracting Officer.

(End of clause)

3052.204-72 Safeguarding of controlled unclassified information.

As prescribed in (HSAR) 48 CFR 3004.470-4(b), insert the following clause:

Safeguarding of Controlled Unclassified Information (JUL 2023)

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

Adequate Security means security protections commensurate with the risk resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of information. This includes ensuring that information hosted on behalf of an agency and information systems and applications used by the agency operate effectively and provide appropriate confidentiality, integrity, and availability protections through the application of cost-effective security controls.

Controlled Unclassified Information (CUI) is any information the Government creates or possesses, or an entity creates or possesses for or on behalf of the Government (other than classified information) that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls. This definition includes the following CUI categories and subcategories of information:

(1) Chemical-terrorism Vulnerability Information (CVI) as defined in 6 CFR part 27, “Chemical Facility Anti-Terrorism Standards,” and as further described in supplementary guidance issued by an authorized official of the Department of Homeland Security (including the Revised Procedural Manual “Safeguarding Information Designated as Chemical-Terrorism Vulnerability Information” dated September 2008);

(2) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (title XXII, subtitle B of the Homeland Security Act of 2002 as amended through Public Law 116-283), PCII's implementing regulations (6 CFR part 29), the PCII Program Procedures Manual, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security, the PCII Program Manager, or a PCII Program Manager Designee;

(3) Sensitive Security Information (SSI) as defined in 49 CFR part 1520, “Protection of Sensitive Security Information,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or designee), including Department of Homeland Security MD 11056.1, “Sensitive Security Information (SSI)” and, within the Transportation Security Administration, TSA MD 2810.1, “SSI Program”;

(4) Homeland Security Agreement Information means information the Department of Homeland Security receives pursuant to an agreement with State, local, Tribal, territorial, or private sector partners that is required to be protected by that agreement. The Department receives this information in furtherance of the missions of the Department, including, but not limited to, support of the Fusion Center Initiative and activities for cyber information sharing consistent with the Cybersecurity Information Sharing Act of 2015;

(5) Homeland Security Enforcement Information means unclassified information of a sensitive nature lawfully created, possessed, or transmitted by the Department of Homeland Security in furtherance of its immigration, customs, and other civil and criminal enforcement missions, the unauthorized disclosure of which could adversely impact the mission of the Department;

(6) International Agreement Information means information the Department of Homeland Security receives that is required to be protected by an information sharing agreement or arrangement with a foreign government, an international organization of governments or any element thereof, an international or foreign public or judicial body, or an international or foreign private or non-governmental organization;

(7) Information Systems Vulnerability Information (ISVI) means:

(i) Department of Homeland Security information technology (IT) systems data revealing infrastructure used for servers, desktops, and networks; applications name, version, and release; switching, router, and gateway information; interconnections and access methods; and mission or business use/need. Examples of ISVI are systems inventories and enterprise architecture models. Information pertaining to national security systems and eligible for classification under Executive Order 13526 will be classified as appropriate; and/or

(ii) Information regarding developing or current technology, the release of which could hinder the objectives of the Department, compromise a technological advantage or countermeasure, cause a denial of service, or provide an adversary with sufficient information to clone, counterfeit, or circumvent a process or system;

(8) Operations Security Information means Department of Homeland Security information that could be collected, analyzed, and exploited by a foreign adversary to identify intentions, capabilities, operations, and vulnerabilities that threaten operational security for the missions of the Department;

(9) Personnel Security Information means information that could result in physical risk to Department of Homeland Security personnel or other individuals whom the Department is responsible for protecting;

(10) Physical Security Information means reviews or reports illustrating or disclosing facility infrastructure or security vulnerabilities related to the protection of Federal buildings, grounds, or property. For example, threat assessments, system security plans, contingency plans, risk management plans, business impact analysis studies, and certification and accreditation documentation;

(11) Privacy Information includes both Personally Identifiable Information (PII) and Sensitive Personally Identifiable Information (SPII). PII refers to information that can be used to distinguish or trace an individual's identity, either alone, or when combined with other information that is linked or linkable to a specific individual; and SPII is a subset of PII that if lost, compromised, or disclosed without authorization could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. To determine whether information is PII, the DHS will perform an assessment of the specific risk that an individual can be identified using the information with other information that is linked or linkable to the individual. In performing this assessment, it is important to recognize that information that is not PII can become PII whenever additional information becomes available, in any medium or from any source, that would make it possible to identify an individual. Certain data elements are particularly sensitive and may alone present an increased risk of harm to the individual.

(i) Examples of stand-alone PII that are particularly sensitive include: Social Security numbers (SSNs), driver's license or State identification numbers, Alien Registration Numbers (A-numbers), financial account numbers, and biometric identifiers.

(ii) Multiple pieces of information may present an increased risk of harm to the individual when combined, posing an increased risk of harm to the individual. SPII may also consist of any grouping of information that contains an individual's name or other unique identifier plus one or more of the following elements:

(A) Truncated SSN (such as last 4 digits);

(B) Date of birth (month, day, and year);

(C) Citizenship or immigration status;

(D) Ethnic or religious affiliation;

(E) Sexual orientation;

(F) Criminal history;

(G) Medical information; and

(H) System authentication information, such as mother's birth name, account passwords, or personal

identification numbers (PINs).

(iii) Other PII that may present an increased risk of harm to the individual depending on its context, such as a list of employees and their performance ratings or an unlisted home address or phone number. The context includes the purpose for which the PII was collected, maintained, and used. This assessment is critical because the same information in different contexts can reveal additional information about the impacted individual.

Federal information means information created, collected, processed, maintained, disseminated, disclosed, or disposed of by or for the Federal Government, in any medium or form.

Federal information system means an information system used or operated by an agency or by a Contractor of an agency or by another organization on behalf of an agency.

Handling means any use of controlled unclassified information, including but not limited to marking, safeguarding, transporting, disseminating, re-using, storing, capturing, and disposing of the information.

Incident means an occurrence that—

(1) Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or

(2) Constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

Information Resources means information and related resources, such as personnel, equipment, funds, and information technology.

Information Security means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) Availability, which means ensuring timely and reliable access to and use of information.

Information System means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

(b) *Handling of Controlled Unclassified Information.*

(1) Contractors and subcontractors must provide adequate security to protect CUI from unauthorized access and disclosure. Adequate security includes compliance with DHS policies and procedures in effect at the time of contract award. These policies and procedures are accessible at *https://www.dhs.gov/dhs-security-and-training-requirements-contractors*.

(2) The Contractor shall not use or redistribute any CUI handled, collected, processed, stored, or transmitted by the Contractor except as specified in the contract.

(3) The Contractor shall not maintain SPII in its invoicing, billing, and other recordkeeping systems maintained to support financial or other administrative functions. It is acceptable to maintain in these systems the names, titles, and contact information for the Contracting Officer's Representative (COR) or other government personnel associated with the administration of the contract, as needed.

(4) Any government data provided, developed, or obtained under the contract, or otherwise under the control of the Contractor, shall not become part of the bankruptcy estate in the event a Contractor and/or subcontractor enters bankruptcy proceedings.

(c) *Incident Reporting Requirements.*

(1) Contractors and subcontractors shall report all known or suspected incidents to the Component Security Operations Center (SOC) in accordance with Attachment F, *Incident Response,* to DHS Policy Directive 4300A *Information Technology System Security Program, Sensitive Systems.* If the Component SOC is not available, the Contractor shall report to the DHS Enterprise SOC. Contact information for the DHS Enterprise SOC is accessible at *https://www.dhs.gov/dhs-security-and-training-requirements-contractors*. Subcontractors are required to notify the prime Contractor that it has reported a known or suspected incident to the Department. Lower tier subcontractors are required to likewise notify their higher tier subcontractor, until the prime contractor is reached. The Contractor shall also notify the Contracting Officer and COR using the contact information identified in the contract. If the report is made by phone, or the email address for the Contracting Officer or COR is not immediately available, the Contractor shall contact the Contracting Officer and COR immediately after reporting to the Component or DHS Enterprise SOC.

(2) All known or suspected incidents involving PII or SPII shall be reported within 1 hour of discovery. All other incidents shall be reported within 8 hours of discovery.

(3) CUI transmitted via email shall be protected by encryption or transmitted within secure communications systems. CUI shall be transmitted using a *FIPS 140-2/140-3 Security Requirements for Cryptographic Modules* validated cryptographic module identified on *https://csrc.nist.gov/projectscryptographic-module-validation-program/v…*. When this is impractical or unavailable, for Federal information systems only, CUI may be transmitted over regular email channels. When using regular email channels, Contractors and subcontractors shall not include any CUI in the subject or body of any email. The CUI shall be included as a password-protected attachment with the password provided under separate cover, including as a separate email. Recipients of CUI information will comply with any email restrictions imposed by the originator.

(4) An incident shall not, by itself, be interpreted as evidence that the Contractor or Subcontractor has failed to provide adequate information security safeguards for CUI or has otherwise failed to meet the requirements of the contract.

(5) If an incident involves PII or SPII, in addition to the incident reporting guidelines in Attachment F, *Incident Response,* to DHS Policy Directive 4300A *Information Technology System Security Program, Sensitive Systems,* Contractors shall also provide as many of the following data elements that are available at the time the incident is reported, with any remaining data elements provided within 24 hours of submission of the initial incident report:

(i) Unique Entity Identifier (UEI);

(ii) Contract numbers affected unless all contracts by the company are affected;

(iii) Facility CAGE code if the location of the event is different than the prime Contractor location;

(iv) Point of contact (POC) if different than the POC recorded in the System for Award Management (address, position, telephone, and email);

(v) Contracting Officer POC (address, telephone, and email);

(vi) Contract clearance level;

(vii) Name of subcontractor and CAGE code if this was an incident on a subcontractor network;

(viii) Government programs, platforms, or systems involved;

(ix) Location(s) of incident;

(x) Date and time the incident was discovered;

(xi) Server names where CUI resided at the time of the incident, both at the Contractor and subcontractor level;

(xii) Description of the government PII or SPII contained within the system; and

(xiii) Any additional information relevant to the incident.

(d) *Incident Response Requirements.*

(1) All determinations by the Department related to incidents, including response activities, will be made in writing by the Contracting Officer.

(2) The Contractor shall provide full access and cooperation for all activities determined by the Government to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of incidents.

(3) Incident response activities determined to be required by the Government may include, but are not limited to, the following:

(i) Inspections;

(ii) Investigations;

(iii) Forensic reviews;

(iv) Data analyses and processing; and

(v) Revocation of the Authority to Operate (ATO), if applicable.

(4) The Contractor shall immediately preserve and protect images of known affected information systems and all available monitoring/packet capture data. The monitoring/packet capture data shall be retained for at least 180 days from submission of the incident report to allow DHS to request the media or decline interest.

(5) The Government, at its sole discretion, may obtain assistance from other Federal agencies and/or third-party firms to aid in incident response activities.

(e) *Certificate of Sanitization of Government and Government-Activity-Related Files and Information.* Upon the conclusion of the contract by expiration, termination, cancellation, or as otherwise

indicated in the contract, the Contractor shall return all CUI to DHS and/or destroy it physically and/or logically as identified in the contract unless the contract states that return and/or destruction of CUI is not required. Destruction shall conform to the guidelines for media sanitization contained in NIST SP 800-88, *Guidelines for Media Sanitization.* The Contractor shall certify and confirm the sanitization of all government and government-activity related files and information. The Contractor shall submit the certification to the COR and Contracting Officer following the template provided in NIST SP 800-88, *Guidelines for Media Sanitization,* Appendix G.

(f) *Other Reporting Requirements.* Incident reporting required by this clause in no way rescinds the Contractor's responsibility for other incident reporting pertaining to its unclassified information systems under other clauses that may apply to its contract(s), or as a result of other applicable statutory or regulatory requirements, or other U.S. Government requirements.

(g) *Subcontracts.* The Contractor shall insert this clause in all subcontracts and require subcontractors to include this clause in all lower tier subcontracts when subcontractor employees will have access to CUI; CUI will be collected or maintained on behalf of the agency by a subcontractor; or a subcontractor information system(s) will be used to process, store, or transmit CUI.

(End of clause)

Alternate I (JUL 2023)

When Federal information systems, which include Contractor information systems operated on behalf of the agency, are used to collect, process, store, or transmit CUI, add the following paragraphs:

(h) *Authority to Operate.* The Contractor shall not collect, process, store, or transmit CUI within a Federal information system until an ATO has been granted by the Component or Headquarters CIO, or designee. Once the ATO has been granted by the Government, the Contracting Officer shall incorporate the ATO into the contract as a compliance document. Unless otherwise specified in the ATO letter, the ATO is valid for 3 years. An ATO is granted at the sole discretion of the Government and can be revoked at any time. Contractor receipt of an ATO does not create any contractual right of access or entitlement. The Government's grant of an ATO does not alleviate the Contractor's responsibility to ensure the information system controls are implemented and operating effectively.

(1) *Complete the Security Authorization process.* The Security Authorization (SA) process shall proceed according to DHS Policy Directive 4300A *Information Technology System Security Program, Sensitive Systems* (Version 13.3, February 13, 2023), or any successor publication; and the *Security Authorization Process Guide,* including templates. These policies and templates are accessible at *https://www.dhs.gov/dhs-security-and-training-requirements-contractors*.

(i) *Security Authorization Package.* The SA package shall be developed using the government-provided Security Requirements Traceability Matrix and SA templates. The SA package consists of the following: Security Plan, Contingency Plan, Contingency Plan Test Results, Configuration Management Plan, Security Assessment Plan, Security Assessment Report, and Authorization to Operate Letter. Additional documents that may be required include a Plan(s) of Action and Milestones and Interconnection Security Agreement(s). The Contractor shall submit a signed copy of the SA package, validated by an independent third party, to the COR for review and approval by the Component or Headquarters CIO, or designee, at least 30 days prior to the date of operation of the information system. The Government is the final authority on the compliance of the SA package and may limit the number of resubmissions of modified documents.

(ii) *Independent Assessment.* Contractors shall have an independent third party validate the security and privacy controls in place for the information system(s). The independent third party shall review and analyze the SA package, and report on technical, operational, and management level deficiencies as outlined in NIST SP 800-53, *Security and Privacy Controls for Information Systems and Organizations,* or successor publication, accessible at *https://csrc.nist.gov/publications/sp.* The Contractor shall address all deficiencies before submitting the SA package to the COR for review.

(2) *Renewal of ATO.* Unless otherwise specified in the ATO letter, the Contractor shall renew the ATO every 3 years. The Contractor is required to update its SA package as part of the ATO renewal process for review and verification of security controls. Review and verification of security controls is independent of the system production date and may include onsite visits that involve physical or logical inspection of the Contractor environment to ensure controls are in place. The updated SA package shall be submitted for review and approval by the Component or Headquarters CIO, or designee, at least 90 days before the ATO expiration date. The Contractor shall update its SA package by one of the following methods:

(i) Updating the SA package in the DHS Information Assurance Compliance System; or

(ii) Submitting the updated SA package directly to the COR.

(3) *Security Review.* The Government may elect to conduct periodic reviews to ensure that the security requirements contained in the contract are being implemented and enforced. The Government, at its sole discretion, may obtain assistance from other Federal agencies and/or third-party firms to aid in security review activities. The Contractor shall afford DHS, the Office of the Inspector General, other government organizations, and Contractors working in support of the Government access to the Contractor's facilities, installations, operations, documentation, databases, networks, systems, and personnel used in the performance of this contract. The Contractor shall, through the Contracting Officer and COR, contact the Component or Headquarters CIO, or designee, to coordinate and participate in review and inspection activity by government organizations external to DHS. Access shall be provided, to the extent necessary as determined by the Government (including providing all requested images), for the Government to carry out a program of inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of government data or the function of computer systems used in performance of this contract and to preserve evidence of computer crime.

(4) *Federal Reporting and Continuous Monitoring Requirements.* Contractors operating information systems on behalf of the Government shall comply with Federal reporting and information system continuous monitoring requirements. Reporting requirements are determined by the Government and are defined in the Fiscal Year 2015 DHS Information Security Performance Plan, or successor publication, accessible at *https://www.dhs.gov/dhs-security-and-training-requirements-contractors*. The plan is updated on an annual basis. Annual, quarterly, and monthly data collection will be coordinated by the Government. The Contractor shall provide the Government with all information to fully satisfy Federal reporting requirements for information systems. The Contractor shall provide the COR with requested information within 3 business days of receipt of the request. Unless otherwise specified in the contract, monthly continuous monitoring data shall be stored at the Contractor's location for a period not less than 1 year from the date the data are created. The Government may elect to perform information system continuous monitoring and IT security scanning of information systems from government tools and infrastructure.

(End of clause)

3052.204-73 Notification and credit monitoring requirements for Personally Identifiable Information incidents.

As prescribed in (HSAR) 48 CFR 3004.470-4(c), insert the following clause:

3052.204-73 Notification and Credit Monitoring Requirements for Personally Identifiable Information Incidents (JUL 2023)

(a) *Definitions.* Privacy Information includes both Personally Identifiable Information (PII) and Sensitive Personally Identifiable Information (SPII). PII refers to information that can be used to distinguish or trace an individual's identity, either alone, or when combined with other information that is linked or linkable to a specific individual; and SPII is a subset of PII that if lost, compromised, or disclosed without authorization could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. To determine whether information is PII, the DHS will perform an assessment of the specific risk that an individual can be identified using the information with other information that is linked or linkable to the individual. In performing this assessment, it is important to recognize that information that is not PII can become PII whenever additional information becomes available, in any medium or from any source, that would make it possible to identify an individual. Certain data elements are particularly sensitive and may alone present an increased risk of harm to the individual.

(1) Examples of stand-alone PII that are particularly sensitive include: Social Security numbers (SSNs), driver's license or State identification numbers, Alien Registration Numbers (A-numbers), financial account numbers, and biometric identifiers.

(2) Multiple pieces of information may present an increased risk of harm to the individual when combined, posing an increased risk of harm to the individual. SPII may also consist of any grouping of information that contains an individual's name or other unique identifier plus one or more of the following elements:

(i) Truncated SSN (such as last 4 digits);

(ii) Date of birth (month, day, and year);

(iii) Citizenship or immigration status;

(iv) Ethnic or religious affiliation;

(v) Sexual orientation;

(vi) Criminal history;

(vii) Medical information; and

(viii) System authentication information, such as mother's birth name, account passwords, or personal identification numbers (PINs).

(3) Other PII that may present an increased risk of harm to the individual depending on its context, such as a list of employees and their performance ratings or an unlisted home address or phone number. The context includes the purpose for which the PII was collected, maintained, and used. This assessment is critical because the same information in different contexts can reveal additional information about the impacted individual.

(b) *PII and SPII Notification Requirements.*

(1) No later than 5 business days after being directed by the Contracting Officer, or as otherwise required by applicable law, the Contractor shall notify any individual whose PII or SPII was either under the control of the Contractor or resided in an information system under control of the Contractor at the time the incident occurred. The method and content of any notification by the Contractor shall be coordinated with, and subject to prior written approval by, the Contracting Officer. The Contractor shall not proceed with notification unless directed in writing by the Contracting Officer.

(2) All determinations by the Department related to notifications to affected individuals and/or Federal agencies and related services (*e.g.,* credit monitoring) will be made in writing by the Contracting Officer.

(3) Subject to government analysis of the incident and direction to the Contractor regarding any resulting notification, the notification method may consist of letters to affected individuals sent by first-class mail, electronic means, or general public notice, as approved by the Government. Notification may require the Contractor's use of address verification and/or address location services. At a minimum, the notification shall include:

(i) A brief description of the incident;

(ii) A description of the types of PII or SPII involved;

(iii) A statement as to whether the PII or SPII was encrypted or protected by other means;

(iv) Steps individuals may take to protect themselves;

(v) What the Contractor and/or the Government are doing to investigate the incident, mitigate the incident, and protect against any future incidents; and

(vi) Information identifying who individuals may contact for additional information.

(c) *Credit Monitoring Requirements.* The Contracting Officer may direct the Contractor to:

(1) Provide notification to affected individuals as described in paragraph (b).

(2) Provide credit monitoring services to individuals whose PII or SPII was under the control of the Contractor or resided in the information system at the time of the incident for a period beginning the date of the incident and extending not less than 18 months from the date the individual is notified. Credit monitoring services shall be provided from a company with which the Contractor has no affiliation. At a minimum, credit monitoring services shall include:

(i) Triple credit bureau monitoring;

(ii) Daily customer service;

(iii) Alerts provided to the individual for changes and fraud; and

(iv) Assistance to the individual with enrollment in the services and the use of fraud alerts.

(3) Establish a dedicated call center. Call center services shall include:

(i) A dedicated telephone number to contact customer service within a fixed period;

(ii) Information necessary for registrants/enrollees to access credit reports and credit scores;

(iii) Weekly reports on call center volume, issue escalation (*i.e.,* those calls that cannot be handled by call center staff and must be resolved by call center management or DHS, as appropriate), and other key metrics;

(iv) Escalation of calls that cannot be handled by call center staff to call center management or DHS, as appropriate;

(v) Customized Frequently Asked Questions, approved in writing by the Contracting Officer in coordination with the Component or Headquarters Privacy Officer; and

(vi) Information for registrants to contact customer service representatives and fraud resolution representatives for credit monitoring assistance.

(End of clause)

3052.205-70 Advertisements, Publicizing Awards, and Releases.

As prescribed in (HSAR) 48 CFR 3005.470-2, insert the following clause:

Advertisements, Publicizing Awards, and Releases (SEP 2012)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(End of clause)

Alternate I (SEP 2012). If a contract involves sensitive or classified information, designate the paragraph in the base clause as (a) and add the following paragraph (b) to the clause:

(b) All advertisements, releases, announcements, or other publication regarding this contract or the agency programs and projects covered under it, or the results or conclusions made pursuant to performance, must be approved by the Contracting Officer. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity, release, or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(End of clause)

3052.209-70 Prohibition on contracts with corporate expatriates.

As prescribed at (HSAR) 48 CFR 3009.108-7005, insert the following provision:

Prohibition on Contracts With Corporate Expatriates (JUN 2006)

(a) *Prohibitions.* Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department

of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this provision, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) *Definitions.* As used in this provision:

Expanded Affiliated Group means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

Foreign Incorporated Entity means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

Inverted Domestic Corporation. A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Person, domestic, and foreign have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) *Special rules.* The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) Stock of such entity which is sold in a public offering related to an acquisition described in section 835(b)(1) of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(2) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of Certain Rights.*

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) Warrants;

(ii) Options;

(iii) Contracts to acquire stock;

(iv) Convertible debt instruments;

(v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

_ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108-7000 through 3009.108-7003;

_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108-7000 through 3009.108-7003, but it has submitted a request for waiver pursuant to 3009.108-7004, which has not been denied; or

_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108-7000 through 3009.108-7003, but it plans to submit a request for waiver pursuant to 3009.108-7004.

(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal.

(End of provision)

3052.209-71 [Reserved]]

3052.209-72 Organizational conflict of interest.

As prescribed in (HSAR) 48 CFR 3009.507-1, insert the following clause:

Organizational Conflict of Interest (JUN 2006)

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting ___["contracting officer shall insert description here"].___

(b) If any such conflict of interest is found to exist, the Contracting Officer may

(1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to avoid, neutralize, mitigate, or waive such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) Disclosure: The offeror hereby represents, to the best of its knowledge that:

_(1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or

_(2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included a mitigation plan in accordance with paragraph (d) of this clause.

(d) Mitigation. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes the conflict can be avoided, neutralized, or mitigated, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this clause do not apply to the extent defined in the mitigation plan.

(e) Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change. The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestures that may affect this clause.

(g) Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

(End of clause)

3052.209-73 Limitation of future contracting.

As prescribed in (HSAR) 48 CFR 3009.507-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts:

Limitation of Future Contracting (JUN 2006)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing DHS contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). DHS shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

3052.209-74 Limitations on contractors acting as lead system integrators.

As prescribed in (HSAR) 48 CFR 3009.570-4(a), use the following provision:

Limitations on Contractors Acting as Lead System Integrators (JUL 2010)

(a) *Definitions.* “Direct financial interest,” “lead system integrator,” “lead system integrator with system responsibility,” and “lead system integrator without system responsibility,” as used in this provision, have the meanings given in the clause of this solicitation entitled “Prohibited Financial Interests for Lead System Integrators” ((HSAR) 48 CFR 3052.209-75).

(b) *General.* Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations.*

(1) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest in the development or construction of any system(s), subsystem(s), system of systems, element of any system of systems, or services it proposes or intends to seek to satisfy this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on whether an exception may apply and what responsibilities the offeror may have in qualifying for an exception.

(e) If the offeror does have a direct financial interest, the offeror shall be prohibited from receiving an award under this solicitation, unless:

(1) The offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control; or

(2) the conditions described in (HSAR) 48 CFR 3009.570-2(b)(1)

(i) and (ii) exist, after an opportunity is afforded to the offeror to provide information or commitments as may be necessary to meet (HSAR) 48 CFR 3009.570-2(b)(1)(ii), assuming any such information or commitment will allow DHS to meet that standard.

(f) This provision implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

(End of provision)

3052.209-75 Prohibited financial interests for lead system integrators.

As prescribed in (HSAR) 48 CFR 3009.570-4(b), use the following clause:

Prohibited Financial Interests for Lead System Integrators (JUL 2010)

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

(1) “Direct financial interest,” for the purpose of this clause and contract, and subject to exceptions set forth 6 U.S.C. 396(b) as implemented, means:

(i) Developing or constructing any individual system or element of any system of systems for which the Contractor is the lead system integrator;

(ii) Owning or being in a position to exert corporate control over a subcontractor at any level under the prime contract;

(iii) Owning, or being in a position to exert corporate control over an entity that either—

(A) Is a subcontractor at any level under the prime contract, or

(B) Owns or is in a position to control another entity that is a subcontractor at any level under the prime contract; and

(iv) Participating or sharing in the profits of another firm's development or construction of any individual system or element of any system of systems for which the Contractor is the lead system integrator or agreeing to participate in the profits of the firm from such development or construction.

(2) “Lead system integrator” includes “lead system integrator with system responsibility” and “lead system integrator without system responsibility.”

(3) “Lead system integrator with system responsibility” means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(4) “Lead system integrator without system responsibility” means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with regard to the development or production of a major system.

(5) The phrase “substantial portion of the work,” as used in the definition of “lead system integrator with system responsibility,” may relate to the dollar value of the effort or to the criticality of the effort performed.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If an organizational conflict of interest in the performance of this contract that is attributable to the Contractor's direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer's satisfaction, the Contracting Officer may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

(End of clause)

3052.209-76 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

As prescribed at (HSAR) 48 CFR 3009.171-9, insert the following clause:

Prohibition on Federal Protective Service Guard Services Contracts With Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony (DEC 2009)

(a) *Prohibitions.* Section 2 of the Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110-356, generally prohibits the Department of Homeland Security from entering into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

(b) *Definitions.* As used in this clause:

Business concern means a commercial enterprise and the people who constitute it.

Felony means an offense which, if committed by a natural person, would be punishable by death or imprisonment for a term exceeding one year.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

(c) A business concern that is owned, controlled, or operated by an individual who has been convicted of any felony, and that wishes to submit a bid, proposal, or other offer on a solicitation to obtain a FPS contract for guard services, must submit with its offer an award request as specified in paragraph (d) of this clause.

(1) A financial, voting, operational, or employment interest in the business concern of the individual's spouse, child, or other family member, or person with whom the individual shares his or her household, will be imputed to the individual in determining whether the individual owns, controls, or operates a business concern.

(2) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(i) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(ii) Officials of comparable function and status to those described in paragraph (c)(2)(i) of this clause as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(iii) A general partner in a general or limited partnership.

(iv) An individual with a limited partnership interest of 25% or more.

(v) An individual that has the:

(A) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(B) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(C) Ability to exercise a controlling influence over the business concern's management and policies.

(3) Generally, the existence of one or more of the roles or interests set forth in paragraph (c)(2) of this clause, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by Government in light of all of the facts and circumstances. Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests, and the offeror or contractor should reveal the existence of felony convictions if there is doubt as to whether the individual owns, controls or operates the business concern.

(d) *Award request.*

(1) A business concern owned, operated or controlled by an individual convicted of any felony may submit an award request to the Contracting Officer. The basis for such request shall be either that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5; that such individual no longer owns, controls or operates the business concern; or that commission of the serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS. The business concern shall bear the burden of proof for award requests.

(2) If the Contracting Officer in his or her sole discretion, is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5 or that such individual no longer owns, controls or operates the business concern, then the Contracting Officer shall deny the award request.

(3) The Head of the Contracting Activity has sole discretion to approve an award request.

(4) A copy of the award request with supporting documentation or a copy of a previously approved award request shall be attached with the bid or proposal.

(5) An award request shall contain the basis for the request (i.e., that the subject felony is not a serious felony as defined by this regulation; that the convicted individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS). The award request shall contain, at a minimum, the following information:

(i) Name and Date of Birth of Individual Convicted of a felony.

(ii) A full description of which roles or interests indicate that the individual owns, controls, or

operates or may own control or operate the business concern.

(iii) Date sentenced.

(iv) Statute/Charge.

(v) Docket/Case Number.

(vi) Court/Jurisdiction.

(vii) The nature and circumstances surrounding the conviction.

(viii) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(ix) Whether the individual has made full restitution for the felony.

(x) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(6) Upon the request of the Contracting Officer, and prior to contract award, in addition to information described in paragraph (d)(5) of this clause, the business concern must provide such other documentation as is requested by the Contracting Officer to use in determining and evaluating ownership, control, or operation; the nature of the felonies committed; and such other information as is needed to make a decision on whether award should be made to the offeror under the Federal Protective Service Guard Contracting Reform Act of 2008. The refusal to timely provide such documentation may serve as grounds to preclude contract award.

(e)

(1) *Privacy Statement.* The offeror shall provide the following statement to any individual whose information will be submitted in an award request pursuant to (d)(5) and (6) of this clause.

(2) *Privacy Notice.* The collection of this information is authorized by the Federal Protective Service Guard Contracting Reform Act of 2008 (Pub. L. 110-356) and Department of Homeland Security (DHS) implementing regulations at Homeland Security Acquisition Regulation (HSAR) 48 CFR 3009.171. This information is being collected to determine whether an individual that owns, controls, or operates the business concern submitting this offer has been convicted of a felony that would disqualify the offeror from receiving an award. This information will be used by and disclosed to DHS personnel and contractors or other agents who require this information to determine whether an award request should be approved or denied. Additionally, DHS may share this personal information with the U.S. Justice Department and other Federal and State agencies for collection, enforcement, investigatory, or litigation purposes, or as otherwise authorized. Submission of this information by the individual is voluntary, however, failure to provide it may result in denial of an award to the offeror. Individuals who wish to correct inaccurate information in or to remove their information from an offer that has been submitted should contact the business concern submitting the offer and request correction. Should individuals seek to correct inaccurate information or remove their information from an offer that has been submitted in response to a solicitation for FPS guard services prior to contract award, an authorized representative of the business concern submitting the offer must contact the contracting officer of record and request that the firm's offer be formally withdrawn or submit a correction to the award request. After contract award, it is recommended that an authorized representative of the business concern that submitted the inaccurate or erroneous information contact the contracting officer of record. The contracting

officer will handle such requests on a case by case basis.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

_It is not a business concern owned, controlled, or operated by an individual convicted of a felony.

_It is a business concern owned, controlled, or operated by an individual convicted of a felony, and has submitted an award request pursuant to paragraph (d) of this clause.

(g) If an award request is applied for, the offeror shall attach the request with supporting documentation, to the bid or proposal. The supporting documentation may include copies of prior award requests granted to the offeror.

(h) The notification in this paragraph applies if this is an indefinite delivery/indefinite quantity contract, blanket purchase agreement, or other contractual instrument that may result in the issuance of task orders, calls or option to extend the terms of a contract. The Contractor must immediately notify the Contracting Officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in paragraph (c) of this clause at any time during the performance of this contract. Upon notification of a felony conviction the Contracting Officer will review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

(End of clause)

3052.211-70 Index for specifications.

As prescribed in (HSAR) 48 CFR 3011.204-70 insert the following clause:

Index for Specifications (DEC 2003)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

3052.212-70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items.

As prescribed in (HSAR) 48 CFR 3012.301, insert the following clause:

Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items (JUL 2023)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference: [The Contracting Officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The Contracting

Officer may add the date of the provision or clause if desired for clarity.]

(a) *Provisions.*

____3052.216-70 Evaluation of Offers Subject to An Economic Price Adjustment Clause.

____3052.219-72 Evaluation of Prime Contractor Participation in the DHS Mentor Protégé Program.

____3052.247-70 F.o.B. Origin Information.

____Alternate I

____Alternate II

____3052.247-71 F.o.B. Origin Only.

____3052.247-72 F.o.B. Destination Only.

(b) *Clauses.*

____3052.203-70 Instructions for Contractor Disclosure of Violations.

____3052.204-71 Contractor Employee Access.

____Alternate I

____Alternate II

____3052.204-72 Safeguarding of Controlled Unclassified Information.

____Alternate I

____3052.204-73 Notification and Credit Monitoring Requirements for Personally Identifiable Information Incidents.

____3052.205-70 Advertisement, Publicizing Awards, and Releases.

____Alternate I

____3052.209-72 Organizational Conflicts of Interest.

____3052.209-73 Limitation on Future Contracting.

____3052.215-70 Key Personnel or Facilities.

____3052.216-71 Determination of Award Fee.

____3052.216-72 Performance Evaluation Plan.

____3052.216-73 Distribution of Award Fee.

____3052.217-91 Performance. (USCG)

____3052.217-92 Inspection and Manner of Doing Work. (USCG)

____3052.217.93 Subcontracts. (USCG)

____3052.217.94 Lay Days. (USCG)

____3052.217-95 Liability and Insurance. (USCG)

____3052.217-96 Title. (USCG)

____3052.217.97 Discharge of Liens. (USCG)

____3052.217-98 Delays. (USCG)

____3052.217-99 Department of Labor Safety and Health Regulations for Ship Repair. (USCG)

____3052.217-100 Guarantee. (USCG)

____3052.219-71 DHS Mentor Protégé Program.

____3052.228-70 Insurance.

____3052.228-90 Notification of Miller Act Payment Bond Protection. (USCG)

____3052.228-91 Loss of or Damage to Leased Aircraft. (USCG)

____3052.228.92 Fair Market Value of Aircraft. (USCG)

____3052.228-93 Risk and Indemnities. (USCG)

____3052.236-70 Special Provisions for Work at Operating Airports.

____3052.242-72 Contracting Officer's Representative.

____HSAR 3052.249-90 Contract Termination (USCG).

(End of clause)

3052.215-70 Key personnel or facilities.

As prescribed in (HSAR) 48 CFR 3015.204-3, insert the following clause:

Key Personnel or Facilities (DEC 2003)

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel or Facilities under this Contract:

(*specify key personnel or facilities*)

(End of clause)

3052.216-70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (HSAR) 48 CFR 3016.203-470, insert a provision substantially the same as the following:

Evaluation of Offers Subject to an Economic Price Adjustment Clause (JUN 2006)

Offers shall be evaluated without adding an amount for an economic price adjustment. Offers may be rejected which: (1) Increase the stipulated ceiling; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

3052.216-71 Determination of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(i), insert a clause substantially the same as the following:

Determination of Award Fee (SEP 2012)

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period(s) to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation Plan. The contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within ___ (*insert number*) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(End of clause)

3052.216-72 Performance evaluation plan.

As prescribed in (HSAR) 48 CFR 3016.406(e)(i)(ii), insert a clause substantially the same as the following:

Performance Evaluation Plan (DEC 2003)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor ___ (*insert number*) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to:

(1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor ___ (*insert number*) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

3052.216-73 Distribution of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(iii), insert a clause substantially the same as the following:

Distribution of Award Fee (DEC 2003)

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:

Available Award Fee:

(*insert appropriate information*)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

3052.216-74 Settlement of letter contract.

As prescribed in (HSAR) 48 CFR 3016.603-4, insert a clause substantially the same as the following:

Settlement of Letter Contract (DEC 2003)

(a) This contract constitutes the definitive contract contemplated by letter contract ___ (*insert number*) issued on ___ (*insert effective date*). It supersedes the letter contract and its modification numbered ___ (*insert number(s)*). To the extent there are inconsistencies between the definitive contract and the letter contract, the former governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract ___ (*insert number*) and modification numbered ___ (*insert number(s)*). Payment of the fee agreed upon or profit withheld pending definitization of the letter contract, may start immediately at the rate and times stated within this contract.

(End of clause)

3052.217-90 Delivery and Shifting of Vessel (USCG).

As prescribed in the USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Delivery and Shifting of Vessel (DEC 2003)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

3052.217-91 Performance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Performance (DEC 2003)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge,—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

3052.217-92 Inspection and manner of doing work (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Inspection and Manner of Doing Work (DEC 2003)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)

(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a “gas-free” or “safe-for-hotwork” certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The contractor additionally must advise the COR of the status of all valves closures and openings for which the contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area “broom clean.”

(End of clause)

3052.217-93 Subcontracts (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Subcontracts (DEC 2003)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

3052.217-94 Lay days (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Lay Days (DEC 2003)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

3052.217-95 Liability and insurance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Liability and Insurance (DEC 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment.

(1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of

$300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.*

(1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall

effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

3052.217-96 Title (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Title (DEC 2003)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

3052.217-97 Discharge of liens (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Discharge of Liens (DEC 2003)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

3052.217-98 Delays (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Delays (DEC 2003)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the “Changes” clause.

(End of clause)

3052.217-99 Department of Labor safety and health regulations for ship repairing (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

Department of Labor Safety and Health Regulations for Ship Repair (DEC 2003)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

3052.217-100 Guarantee (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(c), insert the following clause:

Guarantee (USCG) (JUN 2006)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 60-day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

3052.219-71 DHS mentor-protégé program.

As prescribed in (HSAR) 48 CFR 3019.708-70(a), insert the following clause:

DHS Mentor-Protégé Program (JUN 2006)

(a) Large businesses are encouraged to participate in the DHS Mentor-Protégé program for the purpose of providing developmental assistance to eligible small business protégé entities to enhance their capabilities and increase their participation in DHS contracts.

(b) The program consists of:

(1) Mentor firms, which are large prime contractors capable of providing developmental assistance;

(2) Protégé firms, which are small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns; and

(3) Mentor-Protégé agreements, approved by the DHS OSDBU.

(c) Mentor participation in the program means providing business developmental assistance to aid Protégés in developing the requisite expertise to effectively compete for and successfully perform DHS contracts and subcontracts.

(d) Large business prime contractors serving as mentors in the DHS Mentor-Protégé program are eligible for a post-award incentive for subcontracting plan credit. The mentor may receive credit for costs it incurs to provide assistance to a protégé firm. The mentor may use this additional credit towards attaining its subcontracting plan participation goal under the same or another DHS contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar for dollar basis and reported in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at *http://www.esrs.gov*. For example, a mentor/large business prime contractor would report a $10,000 subcontract to the protégé/small business subcontractor and $5,000 of developmental assistance to the protégé/small business subcontractor as $15,000. The Mentor and Protégé will submit a signed joint statement agreeing on the dollar value of the developmental assistance and the Summary Subcontract Report.

(e) Contractors interested in participating in the program are encouraged to contact the DHS OSDBU for more information.

(End of clause)

3052.219-72 Evaluation of prime contractor participation in the DHS mentor-protégé program.

As prescribed in (HSAR) 48 CFR 3019.708-70(b), insert the following provision:

Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program (JUN 2006)

This solicitation contains a source selection factor or subfactor regarding participation in the DHS Mentor-Protégé Program. In order to receive credit under the source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval from the DHS Office of Small Business and Disadvantaged Business Utilization (OSDBU) before initial evaluation of proposals. The contracting officer may, in his or her discretion, give credit for approvals that occur after initial evaluation of proposals, but before final evaluation.

(End of provision)

3052.222-70 Strikes or picketing affecting timely completion of the contract

work.

As prescribed in (HSAR) 48 CFR 3022.101-71(a), insert the following clause:

Strikes or Picketing Affecting Timely Completion of the Contract Work (DEC 2003)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

3052.222-71 Strikes or picketing affecting access to a DHS facility.

As prescribed in (HSAR) 48 CFR 3022.101-71(b), insert the following clause:

Strikes or Picketing Affecting Access to a DHS Facility (DEC 2003)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DHS facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

3052.222-90 Local hire (USCG).

As prescribed in (HSAR) 48 CFR 3022.9001, insert the following clause:

Local Hire (USCG) (JUN 2006)

(a) When performing a contract in whole or in part in a State with an unemployment rate in excess of the national average determined by the Secretary of Labor, the Contractor shall employ, for the purpose of performing the portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly, the necessary skills.

(b) Local resident defined. As used in this section, “local resident” means a resident of, or an individual who commutes daily to, a State described in subsection (a).

(c) The Secretary of Homeland Security may waive the requirements of paragraph (a) the interest of national security or economic efficiency.

(End of clause)

3052.223-70 Removal or disposal of hazardous substances—applicable licenses and permits.

As prescribed in (HSAR) 48 CFR 3023.303, insert the following clause:

Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (JUN 2006)

The Contractor shall have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it shall obtain all requisite licenses and permits within _[“insert days”]_ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

3052.223-90 Accident and fire reporting (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3023.9000(a), insert the following clause:

Accident and Fire Reporting (DEC 2003)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work that causes:

(1) A fatality or the loss of at least one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Federal real or personal property; either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal real or personal property, the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram, facsimile or e-mail transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

3052.225-70 Requirement for Use of Certain Domestic Commodities.

As prescribed in (HSAR) 48 CFR 3025.7003, use the following clause:

Requirement for Use of Certain Domestic Commodities (NOV 2024)

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

(1) “Commercial,” as applied to an item described in paragraph(b) of this clause, means an item of supply, whether an end item or component, that meets the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

(2) “Component” means any item supplied to the Government as part of an end item or of another component.

(3) “End item” means supplies delivered under a line item of this contract.

(4) “Non-commercial,” as applied to an item described in paragraph (b) or (c) of this clause, means an item of supply, whether an end item or component, that does not meet the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

(5) “Qualifying country” means a country with a memorandum of understanding or international agreement with the United States under which DHS procurement is covered.

(6) “United States” includes the possessions of the United States.

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end items or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof; or

(2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems, load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end items or components, that have been grown, reprocessed, reused, or produced in the

United States:

(1) Cotton and other natural fiber products.

(2) Woven silk or woven silk blends.

(3) Spun silk yarn for cartridge cloth.

(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).

(5) Canvas products.

(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (c).

(d) This clause does not apply—

(1) To items listed in (FAR) 48 CFR 25.104, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at United States market prices;

(2) To the covered items in paragraphs (b) and (c) of this clause containing non-compliant fibers when the total value of the non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item; or

(3) To items that are eligible products per (FAR) 48 CFR Subpart 25.4.

(End of clause)

3052.228-70 Insurance.

As prescribed in (HSAR) 48 CFR 3028.310-70 and 3028.311-1, insert a clause substantially the same as follows. The contracting officer may specify additional kinds (e.g., aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

Insurance (DEC 2003)

In accordance with the clause entitled “Insurance—Work on a Government Installation” [*or Insurance—Liability to Third Persons*] in Section I, 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) 48 CFR 28.307-2(a).

(b) General liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(b).

(c) Automobile liability. The contractor shall, as a minimum, meet the requirements specified at

(FAR) 48 CFR 28.307-2(c).

(End of clause)

3052.228-90 Notification of Miller Act payment bond protection (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.106-490, insert the following clause:

Notification of Miller Act Payment Bond Protection (DEC 2003)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain information pertaining to the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owned for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name)

(Street Address)

(City, State, Zip Code)

(Contact & Tel. No.)

(End of clause)

3052.228-91 Loss of or damage to leased aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (b), insert the following clause:

Loss of or Damage to Leased Aircraft (DEC 2003)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 3052.228-92, “Fair Market Value of Aircraft,” less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

3052.228-92 Fair market value of aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (c), insert the following clause:

Fair Market Value of Aircraft (DEC 2003)

For purposes of the clause entitled “Loss of or Damage to Leased Aircraft,” the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $___; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

3052.228-93 Risk and indemnities (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (d), insert the following clause:

Risk and Indemnities (DEC 2003)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

3052.231-70 Precontract costs.

As prescribed in (HSAR) 48 CFR 3031.205-32, insert the following clause:

Precontract Costs (DEC 2003)

The Contractor shall be entitled to reimbursement for pre-contract costs incurred on or after ___ in an amount not to exceed $___ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

3052.235-70 Dissemination of information—educational institutions.

As prescribed in (HSAR) 48 CFR 3035.70-2, insert the following clause:

Dissemination of Information—Educational Institutions (DEC 2003)

(a) The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the “Data Rights” and “Patent Rights” clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause shall contain acknowledgment of DHS's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DHS. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, a printed or electronic copy of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

3052.236-70 Special precautions for work at operating airports.

As prescribed in (HSAR) 48 CFR 3036.570, insert the following clause:

Special Precautions for Work at Operating Airports (DEC 2003)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. Airport management shall establish the maximum speed allowed at the airport. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and taillights during the hours of darkness.

(End of clause)

3052.242-70 [Reserved]

3052.242-72 Contracting officer's representative.

As prescribed in (HSAR) 48 CFR 3042.7000, insert the following clause:

Contracting Officer's Representative (DEC 2003)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Representative (COR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COR under the contract.

(b) The Contracting Officer cannot authorize the COR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of clause)

3052.247-70 F.o.b. origin information.

As prescribed in (HSAR) 48 CFR 3047.305-70(a), insert the following provision:

F.O.B. Origin Information (DEC 2003)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

Alternate I (DEC 2003). If delivery is “f.o.b. origin, contractor's facility,” and the designated facility is not covered by the line-haul transportation rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

Alternate II (DEC 2003). When delivery is “f.o.b. origin, freight allowed,” add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

3052.247-71 F.o.b. origin only.

As prescribed in (HSAR) 48 CFR 3047.305-70(b), insert the following provision:

F.O.B. Origin Only (DEC 2003)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

3052.247-72 F.o.b. destination only.

As prescribed in (HSAR) 48 CFR 3047.305-70(c), insert the following provision:

F.O.B. Destination Only (DEC 2003)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.