

FEDERAL ACQUISITION CIRCULAR

July 8, 2010

Number 2005-44

Federal Acquisition Circular (FAC) 2005-44 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-44 is effective July 8, 2010.

As a result of the recent issuance of FAC 2005-43, this FAC looseleaf also contains replacement pages that will become effective on July 16, 2010.

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FAC 2005-44 LIST OF SUBJECTS

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Reporting Executive Compensation and First-Tier Subcontract Awards (Interim)	i

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FAC 2005-44 SUMMARY OF ITEM

Federal Acquisition Circular (FAC) 2005-44 amends the Federal Acquisition Regulation (FAR) as specified below:

Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008-039) (Interim)

This interim rule amends the Federal Acquisition Regulation to implement section 2 of Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), which requires the Office of Management and Budget (OMB) to establish a free, public, website containing full disclosure of all Federal contract award information. This rule will require contractors to report executive compensation and first-tier subcontract awards on contracts and orders expected to be \$25,000 or more (including all options), except classified contracts and contracts with individuals. This information will be available to the public. To minimize the burden implementing the Transparency Act will impose on both Federal agencies and contractors, the Councils intend to implement the reporting requirements in a phased approach:

1. Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.

2. From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.

3. Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

The rule is applicable to all solicitations and contracts with a value of \$25,000 or more. The clause is required in commercial item contracts, including commercially available off-the-shelf (COTS) item contracts, as well as actions under the simplified acquisition threshold, meeting the \$25,000 threshold. The clause is not required in classified solicitations and contracts, and contracts with individuals.

Replacement pages: General Structure pp. i and ii; Part 4 TOC pp. 4-1 and 4-2; 4.14-1 and 4.14-2; 12.5-1 and 12.5-2; 42.15-1 and 42.15-2; Part 52 TOC pp. 52-1 and 52-2; 52.2-11 thru 52.2-12.4 (added pp. 52.2-12.3 and 52.2-12.4); 52.2-39 thru 52.2-42.4; and Matrix pp. 52.3-3 and 52.3-4.

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FAC 2005-44 FILING INSTRUCTIONS

NOTE: The FAR is segmented by subparts. The FAR page numbers reflect FAR subparts. For example, "4.14-1" is page one of subpart 4.14.

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FEDERAL ACQUISITION REGULATION

General Structure and Subparts

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4.1402 Procedures.
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4.1501 Procedures.
4.1502 Contract clause.

**Subpart 4.15—American Recovery and
Reinvestment Act—Reporting Requirements**

4.1500 Scope of subpart.

Subpart 4.14—Reporting Executive Compensation and First-Tier Subcontract Awards

4.1400 Scope of subpart.

This subpart implements section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), which requires contractors to report subcontract award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor. The public may view first-tier subcontract award data at <http://usaspending.gov>.

4.1401 Applicability.

(a) This subpart applies to all contracts with a value of \$25,000 or more, except classified contracts and contracts with individuals.

(b) The reporting requirements will be phased-in according to the schedule in [52.204-10\(e\)](#).

(c) For all phases, reporting of subcontract information will be limited to the first-tier subcontractor.

4.1402 Procedures.

(a) Agencies shall ensure that contractors comply with the reporting requirements of [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards. Agencies shall review contractor reports on a quarterly basis to ensure the information is consistent with contract information. The agency is not required to address data for which the agency would not normally have supporting information, such as the compensation information required of contractors and first-tier subcontractors. However, the agency shall inform the con-

tractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation as to why it believes the information is correct. Agencies may review the reports at <http://www.fsrs.gov>.

(b) When contracting officers report the contract action to the Federal Procurement Data System (FPDS) in accordance with FAR subpart [4.6](#), certain data will then pre-populate from FPDS, to assist contractors in completing and submitting their reports. Contracts reported using the generic DUNS number allowed at FAR [4.605\(b\)\(2\)](#) will interfere with the contractor's ability to comply with this reporting requirement, because the data will not pre-populate from FPDS.

(c) If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies. In addition, the contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under [Subpart 42.15](#).

(d) There is a reporting exception in [52.204-10\(d\)](#) for contractors and subcontractors who had gross income in the previous tax year under \$300,000.

4.1403 Contract clause.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall insert the clause at [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards, in all solicitations and contracts of \$25,000 or more.

(b) The clause is not required in—

- (1) Classified solicitations and contracts; or
- (2) Solicitations and contracts with individuals.

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Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-The-Shelf Items

12.500 Scope of subpart.

(a) As required by sections 34 and 35 of the Office of Federal Procurement Policy Act ([41 U.S.C. 430](#) and [431](#)), this subpart lists provisions of law that are not applicable to—

- (1) Contracts for the acquisition of commercial items;
- (2) Subcontracts, at any tier, for the acquisition of commercial items; and
- (3) Contracts and subcontracts, at any tier, for the acquisition of COTS items.

(b) This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.501 Applicability.

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under [Subpart 19.8](#), Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in [12.503](#) has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.

(b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and [52.244-6](#), Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in [12.504](#) by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

(c) The FAR prescription for the provision or clause for each of the laws listed in [12.505](#) has been revised in the appropriate part to reflect its proper application to contracts and subcontracts for the acquisition of COTS items.

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to Executive agency contracts for the acquisition of commercial items:

- (1) [41 U.S.C. 43](#), Walsh-Healey Act (see [Subpart 22.6](#)).
- (2) [41 U.S.C. 254\(a\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [3.404](#)).
- (3) [41 U.S.C. 416\(a\)\(6\)](#), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see [5.203](#)).
- (4) [41 U.S.C. 701](#), *et seq.*, Drug-Free Workplace Act of 1988 (see [23.501](#)).
- (5) [31 U.S.C. 1354\(a\)](#), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see [22.1302](#)).
- (6) [Reserved]
- (7) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).
- (8) [41 U.S.C. 254d\(c\)\(1\)](#) and [10 U.S.C. 2313\(c\)\(1\)](#), GAO Access to Contractor Employees, Section 871 of Pub. L. 110-417 (see [52.214-26](#) and [52.215-2](#)).

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

- (1) [40 U.S.C. 3701](#) *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see [22.305](#)).
- (2) [41 U.S.C. 57\(a\)](#) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see [3.502](#)).
- (3) [49 U.S.C. 40118](#), Requirement for a clause under the Fly American provisions (see [47.405](#)).

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

- (1) [41 U.S.C. 253g](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [3.503](#)).
- (2) [41 U.S.C. 254\(d\)](#) and [10 U.S.C. 2306a](#), Truth in Negotiations Act (see [15.403](#)).
- (3) [41 U.S.C. 422](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

- (1) [10 U.S.C. 2631](#), Transportation of Supplies by Sea (except for the types of subcontracts listed at [47.504\(d\)](#)).

(2) [15 U.S.C. 644\(d\)](#), Requirements relative to labor surplus areas under the Small Business Act (see [Subpart 19.2](#)).

(3) [Reserved]

(4) [41 U.S.C. 43](#), Walsh-Healey Act (see [Subpart 22.6](#)).

(5) [41 U.S.C. 253d](#), Validation of Proprietary Data Restrictions (see [Subpart 27.4](#)).

(6) [41 U.S.C. 254\(a\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [Subpart 3.4](#)).

(7) [41 U.S.C. 254d\(c\)](#) and [10 U.S.C. 2313\(c\)](#), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see [15.209\(b\)](#)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(8) [41 U.S.C. 416\(a\)\(6\)](#), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see [Subpart 5.2](#)).

(9) [41 U.S.C. 418a](#), Rights in Technical Data (see [Subpart 27.4](#)).

(10) [41 U.S.C. 701](#), *et seq.*, Drug-Free Workplace Act of 1988 (see [Subpart 23.5](#)).

(11) [46 U.S.C. App. 1241\(b\)](#), Transportation in American Vessels of Government Personnel and Certain Cargo (see [Subpart 47.5](#)) (except for the types of subcontracts listed at [47.504\(d\)](#)).

(12) [49 U.S.C. 40118](#), Fly American provisions (see [Subpart 47.4](#)).

(13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, [40 U.S.C. 3701](#) *et seq.*, (see [Subpart 22.3](#)) are not applicable

to subcontracts at any tier for the acquisition of commercial items or commercial components.

(c) The applicability of the following laws has been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) [41 U.S.C. 253g](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [Subpart 3.5](#)).

(2) [41 U.S.C. 254\(d\)](#) and [10 U.S.C. 2306a](#), Truth in Negotiations Act (see [Subpart 15.4](#)).

(3) [41 U.S.C. 422](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

12.505 Applicability of certain laws to contracts for the acquisition of COTS items.

COTS items are a subset of commercial items. Therefore, any laws listed in sections [12.503](#) and [12.504](#) are also inapplicable or modified in their applicability to contracts or subcontracts for the acquisition of COTS items. In addition, the following laws are not applicable to contracts for the acquisition of COTS items:

(a)(1) [41 U.S.C. 10a](#), portion of first sentence that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States,” Buy American Act-Supplies, component test (see [52.225-1](#) and [52.225-3](#)).

(2) [41 U.S.C. 10b](#), portion of first sentence that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States,” Buy American Act-Construction Materials, component test (see [52.225-9](#) and [52.225-11](#)).

(b) [42 U.S.C. 6962\(c\)\(3\)\(A\)](#), Certification and Estimate of Percentage of Recovered Material.

Subpart 42.15—Contractor Performance Information

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel the fee determinations.

42.1501 General.

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; the contractor's reporting into databases (see subparts [4.14](#) and [4.15](#)); the contractor's record of integrity and business ethics, and generally, the contractor's business-like concern for the interest of the customer.

42.1502 Policy.

(a) Past performance evaluations shall be prepared as specified in paragraphs (b) through (g) of this section at the time the work under the contract or order is completed. In addition, interim evaluations shall be prepared as specified by the agencies to provide current information for source selection purposes, for contracts or orders with a period of performance, including options, exceeding one year. These evaluations are generally for the entity, division, or unit that performed the contract or order. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

(b) Except as provided in paragraphs (e), (f) and (h) of this section, agencies shall prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold.

(c) Agencies shall prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold placed against a Federal Supply Schedule contract, or under a task order contract or a delivery order contract awarded by another agency (*i.e.* Governmentwide acquisition contract or multi-agency contract). This evaluation shall not consider the requirements under paragraph (g) of this section.

(d) For single-agency task order and delivery order contracts, the contracting officer may require performance evaluations for each order in excess of the simplified acquisition threshold when such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (*e.g.*, when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

(e) Past performance evaluations shall be prepared for each construction contract of \$550,000 or more, and for each construction contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for construction contracts below \$550,000.

(f) Past performance evaluations shall be prepared for each architect-engineer services contract of \$30,000 or more, and for each architect-engineer services contract that is terminated for default regardless of contract value. Past performance evaluations may also be prepared for architect-engineer services contracts below \$30,000.

(g) Past performance evaluations shall include an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at [52.219-9](#), Small Business Subcontracting Plan.

(h) Agencies shall not evaluate performance for contracts awarded under [Subpart 8.7](#).

42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service. Agency procedures shall identify those responsible for preparing interim and final evaluations. Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, end users of the product or service, and any other technical or business advisor, as appropriate. Interim evaluations shall be prepared as required.

(b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection

Information.” Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see [8.604](#)) when FPI is a mandatory source in accordance with [Subpart 8.6](#). The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

(c) Agencies shall submit past performance reports electronically to the Past Performance Information Retrieval Sys-

tem (PPIRS) at www.ppirs.gov. The process for submitting such reports to PPIRS shall be in accordance with agency procedures.

(d) Any past performance information systems used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(e) Agencies shall use the past performance information in PPIRS that is within three years (six for construction and architect-engineer contracts) of the completion of performance of the evaluated contract or order, and information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS) *e.g.*, terminations for default or cause.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

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		52.206	[Reserved]
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52.100	Scope of subpart.	52.207-2	Notice of Streamlined Competition.
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52.107	Provisions and clauses prescribed in Subpart 52.1 .	52.208-4	Vehicle Lease Payments.
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internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

52.204-8 Annual Representations and Certifications.

As prescribed in [4.1202](#), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS
(FEB 2009)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____
[insert NAICS code].

(2) The small business size standard is _____
[insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at [52.204-7](#), Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at [52.204-7](#) is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) [52.203-2](#), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$100,000.

(iii) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the clause at [52.204-7](#), Central Contractor Registration.

(iv) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold;

and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vi) [52.214-14](#), Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(vii) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(viii) [52.219-1](#), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(ix) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(x) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xi) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xii) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiii) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xiv) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xv) [52.225-2](#), Buy American Act Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xvi) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.

(xvii) [52.225-6](#), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](#).

(xviii) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(xix) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

__ (i) [52.219-19](#), Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

__ (ii) [52.219-21](#), Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

__ (iii) [52.219-22](#), Small Disadvantaged Business Status.

__ (A) Basic.

__ (B) Alternate I.

__ (iv) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

__ (v) [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

__ (vi) [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

__ (vii) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA—Designated Products (Alternate I only).

__ (viii) [52.223-13](#), Certification of Toxic Chemical Release Reporting.

__ (ix) [52.227-6](#), Royalty Information.

__ (A) Basic.

__ (B) Alternate I.

__ (x) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR CLAUSE #	TITLE	DATE	CHANGE
_____	_____	_____	_____

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

(End of provision)

52.204-9 Personal Identity Verification of Contractor Personnel.

As prescribed in [4.1303](#), insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEPT 2007)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(End of clause)

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.

As prescribed in [4.1403](#)(a), insert the following clause:

REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2010)

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

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor’s general and administrative expenses or indirect cost.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c)(1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, (and any modifications to these subcontracts that change previously reported data), the Contractor shall report the following information at <http://www.fsrs.gov> for each first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor’s parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor’s primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(2) By the end of the month following the month of a contract award, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor’s preceding completed fiscal year at <http://www.ccr.gov>, if—

(i) In the Contractor’s preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](http://www.usc.gov)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor’s preceding completed fiscal year at <http://www.fsrs.gov>, if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(d)(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards to that subcontractor.

(e) Phase-in of reporting of subcontracts of \$25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

(End of clause)

52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.

As prescribed in [4.1502](#), insert the following clause:

AMERICAN RECOVERY AND REINVESTMENT ACT— REPORTING REQUIREMENTS (JUL 2010)

(a) *Definitions.* For definitions related to this clause (e.g., contract, first-tier subcontract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at http://www.whitehouse.gov/omb/recovery_faqs_contractors. These FAQs are also linked under <http://www.FederalReporting.gov>.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor

to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from the Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(d) The Contractor shall report the following information, using the online reporting tool available at www.FederalReporting.gov.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the Contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and

retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—

(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(End of clause)

52.205 [Reserved]

52.206 [Reserved]

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pose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO
IMPLEMENT STATUTES OR EXECUTIVE ORDERS—
COMMERCIAL ITEMS (JUL 2010)

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

(1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

— Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

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

[Contracting Officer check as appropriate.]

— (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (SEPT 2006), with Alternate I (OCT 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

— (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

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

— (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

— (5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (JUL 2010) (Pub. L. 111-5).

— (6) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).

— (7) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the

offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

— (8) [Reserved]

— (9)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

— (ii) Alternate I (OCT 1995) of [52.219-6](#).

— (iii) Alternate II (MAR 2004) of [52.219-6](#).

— (10)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

— (ii) Alternate I (OCT 1995) of [52.219-7](#).

— (iii) Alternate II (MAR 2004) of [52.219-7](#).

— (11) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

— (12)(i) [52.219-9](#), Small Business Subcontracting Plan (APR 2008) ([15 U.S.C. 637\(d\)\(4\)](#)).

— (ii) Alternate I (OCT 2001) of [52.219-9](#).

— (iii) Alternate II (OCT 2001) of [52.219-9](#).

— (13) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

— (14) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

— (15)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

— (ii) Alternate I (JUNE 2003) of [52.219-23](#).

— (16) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

— (17) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

— (18) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).

— (19) [52.219-28](#), Post Award Small Business Program Rerepresentation (APR 2009) ([15 U.S.C. 632\(a\)\(2\)](#)).

— (20) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

— (21) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126).

— (22) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

— (23) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

— (24) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (25) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).

— (26) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

___ (27) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

___ (28)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

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

___ (29) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

___ (30)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

___ (ii) Alternate I (DEC 2007) of [52.223-16](#).

___ (31) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

___ (32)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

___ (ii) Alternate I (JAN 2004) of [52.225-3](#).

___ (iii) Alternate II (JAN 2004) of [52.225-3](#).

___ (33) [52.225-5](#), Trade Agreements (AUG 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

___ (34) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (35) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

___ (36) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

___ (37) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (38) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (39) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

___ (40) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

___ (41) [52.232-36](#), Payment by Third Party (FEB 2010) ([31 U.S.C. 3332](#)).

___ (42) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

___ (43)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

___ (ii) Alternate I (Apr 2003) of [52.247-64](#).

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

___ (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

___ (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

___ (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

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

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

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

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

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

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

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(ii) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)).

(vii) [Reserved]

(viii) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

___Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

(xii) [52.222-54](#), Employment Eligibility Verification (JAN 2009).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

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

(End of clause)

Alternate I (Feb 2000). As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

Alternate II (Apr 2010). As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

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

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1)*. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5).

(C) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\) and \(3\)](#)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(D) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(E) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).

(F) [52.222-36](#), Affirmative Action for Workers with Disabilities (June 1998) ([29 U.S.C. 793](#)).

(G) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(H) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

(I) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(J) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).

(K) [52.222-54](#), Employment Eligibility Verification (Jan 2009).

(L) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(M) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY." Invoices not prominently marked "FAST PAY" via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

(1) National stock number and/or manufacturer's part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers "FAST PAY" When outer

shipping containers are not marked “FAST PAY,” the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS
(OTHER THAN COMMERCIAL ITEMS) (JUL 2010)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(vii) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(2) Listed below are additional clauses that apply:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(ii) [52.232-1](#), Payments (APR 1984).

(iii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iv) [52.232-11](#), Extras (APR 1984).

(v) [52.232-25](#), Prompt Payment (OCT 2008).

(vi) [52.233-1](#), Disputes (JULY 2002).

(vii) [52.244-6](#), Subcontracts for Commercial Items (JUNE 2010).

(viii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) [52.222-20](#), Walsh-Healey Public Contracts Act (DEC 1996) ([41 U.S.C. 35-45](#)) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*) (Applies to service con-

tracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)

(vii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(ix) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(x) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(xi) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEPT 2006) (Applies to contracts over \$30,000).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(iv) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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

of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply

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

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

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52.301 Solicitation provisions and contract clauses (Matrix).

KEY:	
Type of Contract:	
P or C	= Provision or Clause
IBR	= Is Incorporation by Reference Authorized? (See FAR 52.102)
UCF	= Uniform Contract Format Section, when Applicable
FP SUP	= Fixed-Price Supply
CR SUP	= Cost-Reimbursement Supply
FP R&D	= Fixed-Price Research & Development
CR R&D	= Cost Reimbursement Research & Development
FP SVC	= Fixed-Price Service
CR SVC	= Cost Reimbursement Service
FP CON	= Fixed-Price Construction
CR CON	= Cost Reimbursement Construction
T&M LH	= Time & Material/Labor Hours
LMV	= Leasing of Motor Vehicles
COM SVC	= Communication Services
DDR	= Dismantling, Demolition, or Removal of Improvements
A&E	= Architect-Engineering
FAC	= Facilities
IND DEL	= Indefinite Delivery
TRN	= Transportation
SAP	= Simplified Acquisition Procedures (excluding micro-purchase)
UTL SVC	= Utility Services
CI	= Commercial Items
Contract Purpose:	
R	= Required
A	= Required when Applicable
O	= Optional
✓	= Revision

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.202-1 Definitions.	2.201	C	Yes	I	R	R	A	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
52.203-2 Certificate of Independent Price Determination.	3.103-1	P	No	K	A		A		A		A			A	A	A	A	A	A	A		A	
52.203-3 Gratuities.	3.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-5 Covenant Against Contingent Fees.	3.404	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.203-6 Restrictions on Subcontractor Sales to the Government.	3.503-2	C	Yes	I	R	R			R	R									R			R	
Alternate I	3.503-2	C	Yes																				R
52.203-7 Anti-Kickback Procedures.	3.502-3	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	3.104-9(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.	3.104-9(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	3.808(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-12 Limitation on Payments to Influence Certain Federal Transactions.	3.808(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-13 Contractor Code of Business Ethics and Conduct.	3.1004(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-14 Display of Hotline Poster(s).	3.1004(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.	3.907-7	C	Yes	Yes	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-1 Approval of Contract.	4.103	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-2 Security Requirements.	4.404(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	4.404(b)	C	Yes	I					A														
Alternate II	4.404(c)	C	Yes	I						A	A						A	A					
52.204-3 Taxpayer Identification.	4.905	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-4 Printed or Copied Double-Sided on Recycled Paper.	4.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.204-5 Women-Owned Business (Other Than Small Business)	4.607(b)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.204-6 Data Universal Numbering System (DUNS) Number.	4.607(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-7 Central Contractor Registration.	4.1105	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-8 Annual Representations and Certifications	4.1202	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-9 Personal Identity Verification of Contractor Personnel.	4.1303	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	A	A	
52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards. ✓	4.1403(a) ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	✓	A	✓	A
52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.	4.1502	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.207-1 Notice of Standard Competition.	7.305(a)	P	Yes	L	A		A		A		A			A	A	A				A			
52.207-2 Notice of Streamlined Competition.	7.305(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A			A	A		A	
52.207-3 Right of First Refusal of Employment.	7.305(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A		A	
52.207-4 Economic Purchase Quantity—Supplies.	7.203	P	No	K	A	A													A		A		
52.207-5 Option to Purchase Equipment.	7.404	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.208-4 Vehicle Lease Payments.	8.1104(a)	C	Yes	I										A							A		
52.208-5 Condition of Leased Vehicles.	8.1104(b)	C	Yes	I										A							A		
52.208-6 Marking of Leased Vehicles.	8.1104(c)	C	Yes	I										A							A		
52.208-7 Tagging of Leased Vehicles.	8.1104(d)	C	Yes	I										A							A		
52.208-8 Required Sources for Helium and Helium Usage Data.	8.505	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.208-9 Contractor Use of Mandatory Sources of Supply or Services.	8.004	C	Yes	I	A	A													A		A		
52.209-1 Qualification Requirements.	9.206-2	C	No	I	A	A			A	A				A					A		A		

FAC 2005-42 (LOOSELEAF CORRECTION) FILING INSTRUCTIONS

NOTE: The following replacement pages reflect FAC 2005-42 amendments. Please file these pages after filing all pages from FAC 2005-42. The effective date is **July 16, 2010**.

Remove Pages

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pose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO
IMPLEMENT STATUTES OR EXECUTIVE ORDERS—
COMMERCIAL ITEMS (JUL 2010)

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

(1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

— Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

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

[Contracting Officer check as appropriate.]

— (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (SEPT 2006), with Alternate I (OCT 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

— (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

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

— (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

— (5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (JUL 2010) (Pub. L. 111-5).

— (6) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).

— (7) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

— (8) [Reserved]

— (9)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

— (ii) Alternate I (OCT 1995) of [52.219-6](#).

— (iii) Alternate II (MAR 2004) of [52.219-6](#).

— (10)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

— (ii) Alternate I (OCT 1995) of [52.219-7](#).

— (iii) Alternate II (MAR 2004) of [52.219-7](#).

— (11) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

— (12)(i) [52.219-9](#), Small Business Subcontracting Plan (JUL 2010) ([15 U.S.C. 637\(d\)\(4\)](#)).

— (ii) Alternate I (OCT 2001) of [52.219-9](#).

— (iii) Alternate II (OCT 2001) of [52.219-9](#).

— (iv) Alternate III (JUL 2010) of [52.219-9](#).

— (13) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

— (14) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

— (15)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

— (ii) Alternate I (JUNE 2003) of [52.219-23](#).

— (16) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

— (17) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

— (18) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).

— (19) [52.219-28](#), Post Award Small Business Program Rerepresentation (APR 2009) ([15 U.S.C. 632\(a\)\(2\)](#)).

— (20) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

— (21) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126).

— (22) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

— (23) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

— (24) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (25) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).

— (26) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

___ (27) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

___ (28)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

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

___ (29) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

___ (30)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

___ (ii) Alternate I (DEC 2007) of [52.223-16](#).

___ (31) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

___ (32)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

___ (ii) Alternate I (JAN 2004) of [52.225-3](#).

___ (iii) Alternate II (JAN 2004) of [52.225-3](#).

___ (33) [52.225-5](#), Trade Agreements (AUG 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

___ (34) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (35) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

___ (36) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

___ (37) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (38) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (39) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

___ (40) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

___ (41) [52.232-36](#), Payment by Third Party (FEB 2010) ([31 U.S.C. 3332](#)).

___ (42) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

___ (43)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

___ (ii) Alternate I (Apr 2003) of [52.247-64](#).

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

___ (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

___ (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

___ (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

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

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

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

FAC 2005-42 (LOOSELEAF CORRECTION) FILING INSTRUCTIONS

NOTE: The following replacement pages reflect FAC 2005-42 amendments. Please file these pages after filing all pages from FAC 2005-42. The effective date is **July 16, 2010**.

Remove Pages

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