

FAR Clause 52.212-4 Contract Terms and Conditions--Commercial Items (May 2015). The following addenda apply:

- a) FAR 52.246-2, Inspection of Supplies – Fixed Price (Aug 1996).

FAR Clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders (May 2015) applies to this acquisition and the following FAR clauses cited in the clause are applicable to this acquisition:

52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. 7104(g)).

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

52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78).

52.203-6 - Restrictions on Subcontractor Sales to the Government (Sep 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402)

52.204-10 - Reporting Executive Compensation and First-tier Subcontract Awards (Jul 2013)

52.209-6 - Protecting the Government's Interest -when subcontracting with Contractors debarred, suspended, or proposed for debarment (Aug 2013) (31 U.S.C. 6101 note)

52.209-9 – Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313)

52.219-8 - Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3))

52.219-9 – Small Business Subcontracting Plan (Oct 2014), with Alternate II (Oct 2001)

52.219-16 – Liquidated Damages – Subcontracting Plan (Jan 1999)(15 U.S.C. 674(d)(4)(F)(i)).

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

52.222-3 - Convict Labor (Jun 2003)(F.O. 11755)

52.222-19 - Child Labor - Cooperation with Authorities and Remedies (Apr 2015)(F.O. 13126)

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

52.222-26 - Equal Opportunity (Apr 2015)(F.O 11246)

52.222-35 – Equal Opportunity for Veterans (Jul 2014) (38 U.S.C. 4212)

52.222-36 – Equal Opportunity for Works with Disabilities (Jul 2014) (29 U.S.C. 793)

52.222-37 - Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Jul 2014) (38 U.S.C. 4212)

52.222-40 - Notification of Employee Rights Under the National Labor Relations

52.223-18 - Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011)

52.225-5 - Trade Agreements (Nov 2013)(19 U.S.C.2501, *et seq.*, 19 U.S.C. 3301 note)

52.225-13 - Restrictions on Certain Foreign Purchases (Jun 2008) (Executive Orders,

52.223-18 - Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011)

52.225-5 - Trade Agreements (Nov 2013)(19 U.S.C.2501, *et seq.*, 19 U.S.C. 3301 note)

52.225-13 - Restrictions on Certain Foreign Purchases (Jun 2008) (Executive Orders, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury)

52.232-33 - Payment by Electronic Funds Transfer - System for Award Management (Jul 2013)

Marking of Warranted Items:

Pursuant to the requirements of FAR 46.706(b)(5), the contractor shall stamp or mark the supplies delivered, or otherwise furnish notice with the supplies of the existence of the warranty. Markings may be brief but should include (1) a brief statement that a warranty exists; (2) the substance of the warranty; (3) its duration; and (4) whom to notify if the supplies are found to be defective. For commercial items, the contractor's trade practice in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted supplies.

Contractor Performance Assessment Report (CPAR)

(a) GENERAL: The U.S. Coast Guard Surface Forces Logistic Center (SFLC) will monitor and evaluate the successful offeror's past performance of this contract and prepare a Contractor Performance

Assessment Report (CPAR) in accordance with FAR Part 42.15. All information contained in this assessment may be used, within the limitations of FAR 42.15, by the government for future source selections and in accordance with FAR 15.304, when past performance is an evaluation factor for award.

(b) NOTIFICATION: Upon completion of the contract, the contractor will be notified of the assessment. The contractor will be allowed 30 days to respond to the SFLC's assessment of its performance entered into CPARS. The contractor's response, if any, will be made part of the CPAR system.

(c) INFORMATION: Information included in the CPAR may include, but is not limited to, 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 record of integrity and business ethics, and generally, the contractor's business like concern for the interest of the customer.

(d) RELEASE OF DATA: CPARS information is considered business sensitive and will not be released except: (1) to other Federal procurement activities which request it; (2) when SFLC must release pursuant to a Freedom of Information Act (FOIA) request; or (3)

(e) when prior written consent is requested and obtained from the contractor.

52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)

The following full text Clauses/Provisions are included and applicable to this acquisition:

52.209-7 – Information Regarding Responsibility Matters (Jul 2013)

(a) *Definitions.* As used in this provision—“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceeding at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means-

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions). (b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and

Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i),

(c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management database via <https://www.acquisition.gov> (see 52.204-7).

FAR 52.216-18 – Ordering (Oct 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the effective date of the Contract through a period of one base year and four options years (if exercised).

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, this contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if 21 of 32 authorized in the Schedule.

FAR 52.216-19 – Order Limitations (Oct 1995)

- (a) Minimum order. When the Government requires supplies or services covered by this contract in an amount less than \$0.00, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
- (b) Maximum order. The Contractor is not obligated to honor –
- (1) Any order for a single item in excess of \$500,000
 - (2) Any order for a combination of items in excess of \$500,000
- (3) A series of orders from the same ordering office within 30 days that for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

FAR 2.216-21 - Requirement (Oct 1995)

- a) This is a requirements contract for the supplies or services specified and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.
- (d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.
- (e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.
- (f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after completion of the last delivery order that is issued before the expiration of this Contract.

FAR 52.217-9 - Option to Extend the Term of the Contract (Mar 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor thirty (30) calendar day prior to the expiration of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 calendar days before the contract expires. The preliminary notice does not commit the Government to an extension.

52.232-40 – Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

HSAR 3052.209-70, Prohibition on Contracts with Corporate Expatriates (Jun 2006)

(a) Prohibitions.

Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Definitions. As used in this clause:

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

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

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

- (1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;
- (2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—
 - (i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

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

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

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

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

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

- (i) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or
- (ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).

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

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

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

(e) Treatment of Certain Rights.

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

- (f) warrants;
- (g) options;
- (h) contracts to acquire stock;
- (i) convertible debt instruments; and
- (j) others similar interests.

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

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

It is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73;

It is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it has submitted a request for waiver pursuant to 3009.104-74, which has not been denied; or

It is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it plans to submit a request for waiver pursuant to 3009.104-74.

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

HSAR 3052.209-79, Representation By Corporation Regarding a Felony Criminal Violation Under Any Federal or State Law or Unpaid Federal Tax Liability (Feb 2014) (DHS FAR Class Deviation 14-02):

(a) In accordance with sections 561 and 562 of Division F, Title V of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), none of the funds made available by that Act may be used to enter into a contract with any corporation that:

(1) Was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agency, and made a determination that this further action is not necessary to protect the interests of the Government.

(2) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(b) The Offeror represents that:

(1) It is is not a corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months.

(2) It is is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(c) If the offeror represents in (b) above that it is a corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, or that it is a corporation that has unpaid Federal tax liability that has been assessed, the offeror shall provide all information related to the felony or tax liability within 3 business days of the Government's request.

HSAR 3052.212-70, Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items (Sept 2012): The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

HSAR 3052.205-70, Advertisement, Publicizing, Awards, and Releases (Sep 2012) HSAR 3052.219-70, Small Business Subcontracting Plan

HSAR 3052.219-71, DHS Mentor protégé Program

HSAR 3042.242-72, Contracting Officer's Technical Representative (Dec 2003) HSAR 3052.247-72 F.o.B. Destination Only

14. Defense Priorities and Allocations System (DPAS) is not applicable to this requirement.