



**ADDITIONAL AND SUPPLEMENTAL TERMS AND CONDITIONS APPLICABLE TO  
FIXED-PRICE POS FOR COMMERCIAL ITEMS  
UNDER A UNITED STATES GOVERNMENT CONTRACT**

This PO (“PO”) is placed by Buyer under a prime contract between the United States of America (the “Government”) and Buyer or under a subcontract between Buyer and the holder of a prime contract or a higher-tier subcontract under a prime contract, with the Government. The terms and conditions set forth in this Addendum apply in addition to Buyer’s Standard Purchase Order Terms and Conditions. If there is any conflict between the terms and conditions in this Addendum and those in Buyer’s Standard Order Terms and Conditions, the terms and conditions of this Addendum shall govern.

**1. Responsibility for Property**

- a. All property furnished to Seller by Buyer for performance of this PO or for which Buyer has agreed to pay Seller shall be and remain the property of Buyer or the Government, as applicable. Title to such property shall not be affected by incorporation or attachment to any other property.
- b. All property manufactured or acquired by Seller under this PO, the title to which is in Buyer or the Government, and all property furnished or consigned to Seller by Buyer under this Order, including Government property, shall be maintained in accordance with Federal Acquisition Regulation Subpart 45.5. Such property shall remain the property of Buyer or the Government unless abandoned in place, in which case neither Buyer nor the Government shall have any further obligation concerning same, including, but not limited to, any obligation to restore or rehabilitate Seller’s premises under any circumstances.
- c. When instructed by Buyer, Seller shall deliver the property covered by this clause to Buyer or the Government, as appropriate, F.O.B. carrier, Seller’s plant. Seller shall bear the risk of loss, destruction or damage until such property is received by Buyer or the Government.
- d. Seller shall deliver or return Buyer property and Government property in the same condition as when manufactured, acquired, or received, except for reasonable wear and tear or for utilization in accordance with the requirements of this PO.
- e. With respect to Government property, this clause applies only to Government property coming into Seller’s possession and control solely under this PO. It does not apply to Government property held by Seller under any other contract or other agreement that governs Seller’s responsibility for that property.

**2. Assignment**

Buyer may assign this PO, with prior written notice but without any requirement to obtain Seller’s consent, to the Government or to the prime contractor with the Government where Buyer is a subcontractor under a prime contract with the Government. If this PO is so assigned, Buyer’s liability hereunder shall cease and Seller shall look solely to the assignee for payment. The work under this PO may not be assigned by Seller without Buyer’s prior written consent.

**3. Buy American Act**

- a. Seller shall deliver under this PO only domestic end products, unless Seller has specifically notified Buyer’s Purchasing Agent in writing, prior to the execution of this PO, that domestic end products will not be delivered. For other than commercially available off-the-shelf (“COTS”) items, as defined in FAR 2.101, Seller shall consider components of unknown origin to have been mined, produced, or manufactured outside the U.S.
- b. “Domestic end product,” as used in this clause, is defined at FAR 52.225-(1)(a).

**4. Taxes**

- a. Seller agrees that, unless otherwise indicated in this PO: (i) the prices stated herein do not include any state or local sales, use or other tax or duty from which an exemption is available for purposes of this PO and (ii) the prices stated herein include all other applicable Federal, state and local taxes and duties in effect at the date of this PO.



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- b. Seller agrees to accept and use tax exemption certificates, when supplied by Buyer, if acceptable to the taxing authorities.
- c. In case it shall ever be determined that any tax or duty included in the prices stated herein was not required to be paid by Seller, Seller agrees to notify Buyer and reimburse Buyer for such tax or duty.

**5. Defense Priorities and Allocation System**

If so identified, this PO is a “rated order” certified for national defense use, and Seller shall comply with the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

**6. Additional Warranty and Indemnity**

- a. Seller warrants that it is in full compliance with all applicable Federal Acquisition Regulation (“FAR”) and Defense Federal Acquisition Regulation Supplement (“DFARS”) provisions and clauses applicable to this PO, including, without limitation, those incorporated by reference into this PO. Seller agrees to indemnify and hold harmless Buyer from and against any and all claims, actions, demands, losses, damages, injuries, penalties, withholdings, forfeitures, suits, and the costs and expenses incident thereto (including cost of defense, settlement and reasonable attorney, consultant or other professional fees) that Buyer may incur as a result of Seller’s failure to comply with such provisions or clauses.
- b. In addition to any other remedies that Buyer may have hereunder, if Buyer’s contract price or a cost allowance is reduced by its customer by reason of (i) Seller’s failure to comply with an applicable Cost Accounting Standard (“CAS”) or to follow any practice disclosed in its (CAS) disclosure statement; (ii) Seller’s failure to furnish complete, accurate and current cost and pricing data; or (iii) Seller’s submission of unallowable cost in any proposal or request for equitable adjustment, Buyer shall be entitled to:
  - (1) Reduce the price of this PO by an amount commensurate with the reduction in Buyer’s contract price or cost allowance, and any penalties assessed thereon; or
  - (2) In the event Seller shall already have been paid the full PO price, Seller shall reimburse and indemnify Buyer in an amount commensurate with the reduction in Buyer’s contract price or cost allowance, plus any applicable penalties assessed against Buyer.

**7. Information and Ownership of Deliverables**

- a. This clause applies only if this PO is for supplies or services to be used exclusively in the performance of a prime contract, or a subcontract under a prime contract, with the Government. This clause does not apply if this PO is for supplies or services to be used, in whole or in part, for any purpose other than the performance of such a prime contract or subcontract.
- b. In lieu of the rights in Section 20.N.iii of Buyer’s Standard Purchase Order Terms and conditions, Seller grants to Buyer, solely in connection with Buyer’s performance of any prime contract, or any subcontract under any prime contract, with the Government, a paid-up, royalty-free license to make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of and prepare derivatives, and to authorize others to do any and all of the foregoing, any Work Product first conceived, reduced to practice, authored, developed, or created by Buyer in performance of the PO or delivered by Buyer under the PO.
- c. The term “Work Product,” as used in this clause, shall mean all materials and other output (including all associated intellectual property which shall include without limitation all inventions (whether or not such may be patented), discoveries, developments, improvements, and know-how), including, without limitation, work papers, sketches, drawings, designs, samples, models, algorithms, software, code, architecture, materials, reports, programs, specifications, requirements, plans, documentation, information, data, processes and all other deliverables.

**8. Disputes**

- a. The last two sentences of Section 20.D of Buyer’s Standard Purchase Order Terms and Conditions shall govern all claims, controversies, or disputes arising out of or relating to this PO or its breach (“Disputes”)



that are not directly or indirectly subject to resolution under the Disputes Clause of a prime contract with the Government.

- b. This Section 8(b) shall apply, in lieu of the last two sentences of Section 20.D of Buyer's Standard Purchase Order Terms and Conditions, to all disputes that are directly or indirectly subject to resolution under the Disputes Clause of a prime contract between Buyer and the Government.
- (1) Seller shall prepare the Dispute for submission to the CO under the prime contract, with all required supporting documentation and certifications and in the appropriate form. Buyer shall submit any such Dispute to the CO under the prime contract and shall notify Seller of any final decision of the CO that relates to this PO or to Seller's performance under it, within ten (10) days after Buyer receives the decision. In the event the CO does not issue a final decision within the statutory period and the claim is thereby deemed to be denied, Buyer shall notify Seller thereof within ten (10) days of the deemed denial. Any final decision shall be conclusive and binding upon Seller unless it is appealed under this Section 8(b) and the Disputes Clause of the prime contract.
  - (2) If Buyer elects to appeal the decision, Seller shall provide Buyer reasonable assistance in prosecuting such an appeal, including, without limitation, giving Buyer reasonable access to Seller's personnel and relevant non-privileged documents.
  - (3) If Buyer elects not to appeal any final decision of the CO or deemed denial under the Disputes Clause of the prime contract, Buyer shall so notify Seller in writing within twenty (20) days after Buyer receives the final decision of the CO or the claim is deemed denied. If within thirty (30) days after Seller receives Buyer's notice of its decision not to appeal the final decision of the CO or the deemed denial, Seller notifies Buyer that Seller wishes to appeal that final decision or deemed denial, Buyer shall grant Seller an indirect right to appeal that final decision or deemed denial in Buyer's name under the Disputes Clause of the prime contract. In such event:
    - i. Seller shall pay all costs and expenses of any such appeal reasonably incurred by Buyer;
    - ii. Seller shall be responsible for prosecuting the appeal and preparing and presenting all pleadings, evidence, and argument; and
    - iii. Seller shall provide monthly written reports to Buyer of the progress of the appeal and shall furnish Buyer copies of all pleadings and non-privileged correspondence filed or received by Seller concerning the appeal.
  - (4) If Buyer is required to submit a certification to its customer or to any other Government entity or agency regarding a claim submitted pursuant to the Contract Disputes Act, Seller shall make available to Buyer all non-privileged information that is necessary or appropriate to support or confirm the certification and shall, at a minimum, provide a backup certification to Buyer.
  - (5) Pending the final resolution of any Dispute, Seller shall proceed diligently to perform this PO in accordance with the directions of Buyer's Purchasing Agent.

## **9. Amendments**

Seller agrees that, upon the request of Buyer, it will negotiate in good faith with Buyer to amend this PO to incorporate additional provisions herein or to change the provisions hereof in order to comply with the provisions of the prime contract, Buyer's higher-tier subcontract, or provisions of amendments to either of the foregoing.

## **10. Inspection**

The Government shall have the right to inspect any supplies or services that have been tendered for acceptance. Buyer may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, Buyer may reject the nonconforming supplies or services or seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services.



### **11. Termination**

Buyer reserves the right to terminate the PO, in whole in part, without or without cause, in accordance with Section 15 of Buyer's Standard Purchase Order Terms and Conditions.

### **12. Equal Opportunity**

- a. The following applies to POs with a value of \$10,000 or more: **“This contractor [Buyer] and subcontractor [Seller] shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.”**
- b. The following applies to POs with a value of \$100,000 or more: **“This contractor [Buyer] and subcontractor [Seller] shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.”**

### **13. Definitions for Clauses Incorporated by Reference**

Except as noted in the parenthetical statements in this Addendum, or unless the context plainly requires a different meaning, the terms used in the FARS and DFARS clauses incorporated by reference into this PO shall have the following meaning:

- a. “Contract” means this PO.
- b. “Contracting Officer” (hereinafter “CO”) means the U.S. Government Contracting Officer for the prime contract.
- c. “Contractor” and “Offeror” mean Seller.
- d. “Prime contract” means the contract between Buyer and the Government or, if the context requires otherwise, Buyer's higher-tier subcontract under a contract with the Government.
- e. “Subcontract” means any contract placed by seller or lower-tier subcontractors hereunder.

### **14. FAR Clauses Incorporated by Reference**

The FAR clauses referenced below are incorporated by reference and apply to this Purchase to the extent, and with the modifications, identified below. Clauses identified by an asterisk (\*) apply to the extent, and with the Alternate(s), if any, included in the prime contract.

- a. The following FAR clauses apply to this PO:
  - (1) FAR 52.203-3, Gratuities (APR 1984) (Substitute “Buyer” for “Government,” except in (a)(1) insert “or Buyer” after “Government.” In (a), substitute “opportunity to be heard” for “hearing” and “Buyer's Purchasing Agent” for “the agency head or a designee.” In (b), substitute “pursuant to the Disputes clause of this PO” for “any court having lawful jurisdiction.”)
  - (2) FAR 52.211-5, Material Requirements (AUG 2000) (Substitute “Buyer's Purchasing Agent” for “CO.”)
  - (3) FAR 52.212-15(d), Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (JAN 2014)
  - (4) FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 2010) (In (a)(1), substitute “Buyer's Purchasing Agent” for “CO.” In (a)(2), insert “and Buyer's Purchasing Agent” after “the CO or any authorized representative.”)
  - (5) FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (OCT 2010) (In (a)(1), substitute “Buyer's Purchasing Agent” for “CO.” In (a)(2), insert “and Buyer's Purchasing Agent” after “the CO or any authorized representative.”)



- (6) FAR 52.219-8, Utilization of Small Business Concerns (JUL 2013)
  - (7) FAR 52.222-21, Prohibition on Segregated Facilities (FEB 1999)
  - (8) FAR 52.222-26, Equal Opportunity (MAR 2007)
  - (9) FAR 52.222-50, Combating Trafficking in Persons (FEB 2009) (Substitute “Buyer’s Purchasing Agent” for “CO.” In (e), insert “and Buyer” after “Government.”)
  - (10) FAR 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008)
  - (11) FAR 52.227-19, Commercial Computer Software – Restricted Rights (DEC 2007)
  - (12) FAR 52.242-15, Stop-Work Order (AUG 1989) (Substitute “Buyer” for “Government” and “Buyer’s Purchasing Agent” for “CO.”)
  - (13) FAR 52.244-6, Subcontracts for Commercial Items (DEC 2009)
  - (14) FAR 52.245-1, Government Property (APR 2012) Alternate I (APR 2012) (Substitute “Buyer” for “CO,” except: (A) make no substitution in the definition of Property Administrator and in (h)(1)(iii); and (B) in (c) and (h)(4), insert “or Buyer” after “CO.” In (d)(1), substitute “Buyer” for “Government.” In (d)(2) and (g), insert “or Buyer” after “Government.” Seller’s obligations with respect to Buyer property shall be the same as those identified in this clause with respect to Government property except that, in the case of Buyer property, “Property Administrator” shall mean “Buyer’s Purchasing Agent.”)
  - (15) FAR 52.247-64, Preference for Privately Owned U.S. Flag Commercial Vessels (FEB 2006)
- b. The following FAR clause applies if the PO value is greater than or equal to \$3,000:
- (1) FAR 52.222-54, Employment Eligibility Verification (JAN 2009)
- c. The following FAR clause applies if the PO value is greater than or equal to \$10,000:
- (1) FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)
- d. The following FAR clause applies if the PO Value is greater than or equal to \$15,000:
- (1) FAR 52.222-36, Affirmative Action for Workers with Disabilities (OCT 2010)
- e. The following FAR clauses apply if the PO value is greater than or equal to \$25,000:
- (1) FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Applies if the PO is a first-tier subcontract under a prime contract with the Government and Seller, in the previous tax year, had gross income from all sources under \$300,000. Seller shall report required executive compensation information by posting it to the Government’s Central Contractor Registration database. This information will be made available to the public.)
  - (2) FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Applies if the PO involves the provision, service, or sale of food in the U.S.)
- f. The following FAR clause applies if the PO value is greater than \$30,000:
- (1) FAR 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (AUG 2013) (Seller shall provide Buyer copies of any notices.)
- g. The following FAR clauses apply if the PO value is greater than or equal to \$100,000:
- (1) FAR 52.222-35, Equal Opportunity for Veterans (SEP 2010)
  - (2) FAR 52.222-37, Employment Reports on Veterans (SEP 2010)
- h. The following FAR clauses apply if the PO value is greater than or equal to \$150,000:
- (1) FAR 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006)



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- (2) FAR 52.203-7, Anti-Kickback Procedures (OCT 2010) (Delete (c)(1). After the last sentence of (c)(4), insert the following: “Buyer shall not be liable to Seller for any amounts withheld or paid over to the Government pursuant to this paragraph (c)(4).”)
- (3) FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (OCT 2010) (In (b), (c)(1)(i), and (d)(1), insert “or the prime contract” after “this contract.”)
- i. The following FAR clause applies if the PO Value is greater than or equal to \$700,000:
  - (1) FAR 52.215-23, Limitations on Pass-Through Charges (OCT 2009) (Applies if the Prime Contract is for a Department of Defense entity, unless the PO is of a type exempted pursuant to FAR 15.408(n)(2)(i)(B)(2). Insert “or Seller” after “Government” and “and Seller” after “CO.”)
- j. The following FAR clause applies if the PO value is greater than or equal to \$5 million:
  - (1) FAR 52.203-13, Contractor Code of Business Ethics and Conduct (OCT 2010) (Applies if the period of performance of this PO is more than 120 days. All disclosures relating to potential violations of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the CO.)
- k. The following FAR clauses apply to the extent indicated:
  - (1) FAR 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (MAR 2009) (Applies if the prime is funded, in whole or in part, by the American Recovery and Reinvestment Act.)
  - (2) FAR 52.204-2, Security Requirements (AUG 1996) (Applies if the PO involves access to classified information.)
  - (3) FAR 52.204-9, Personal Identify Verification of Contractor Personnel (JAN 2011) (Applies if the PO involves access to a Federally-controlled facility and/or a Federally-controlled information system.)
  - (4) FAR 52.208-8, Required Sources for Helium and Helium Usage Data (APR 2002) (Applies if the PO involves a “major helium requirement” as defined in the clause. In (b)(2), substitute “Buyer’s Purchasing Agent” for “CO” and “5 days” for “10 days.”)
  - (5) FAR 52.222-41, Service Contract Act of 1965 (NOV 2007) (Applies if the PO is subject to the Service Contract Act of 1965. The clause does not apply if this PO has been administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.)
  - (6) FAR 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (NOV 2007) (Applies to services that are exempt from the Service Contracts Act pursuant to FAR 22.1003-2(c)(3).)
  - (7) FAR 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements (FEB 2009) (Applies to services that are exempt from the Service Contract Act pursuant to FAR 22.1003-4(d)(3).)
  - (8) FAR 52.223-3, Hazardous Material Identification and Material Safety Data (JAN 1997) (Applies if the PO involves hazardous material. Alternate I (JUL 1995) applies if the prime contract is with or supports an agency other than the DoD. Substitute “Buyer’s Purchasing Agent” for “CO.” Insert “and Buyer” after “Government,” except in (f), insert “or Buyer” after “Government.”)
  - (9) FAR 52.223-7, Notice of Radioactive Materials (JAN 1997) (Applies to work involving covered radioactive material. Substitute “Buyer” for “Government” and “Buyer’s Purchasing Agent” for “CO.” Insert “30” in the blank in (a).)
  - (10) FAR 52.223-11, Ozone-Depleting Substances (MAY 2001) (Applies if the work is manufactured with or contains “ozone-depleting substances” as defined in the clause.)
  - (11) FAR 52.224-1, Privacy Act Notification (APR 1984) (Applies if the PO involves design, development, or operation of a system of records on individuals that is subject to the Privacy Act of 1974.)



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- (12) FAR 52.224-2, Privacy Act (APR 1984) (Applies if the PO requires design, development or operation of a system of records on individuals that is subject to the Privacy Act of 1974.)
- (13) FAR 52.225-1, Buy American Act – Supplies (FEB 2009) (In (c), substitute “Buyer’s Purchasing Agent” for “CO.”) (Applies to any portion of the PO that is subject to the Buy American Act.)
- (14) FAR 52.225-5, Trade Agreements (NOV 2013) (Applies to any portion of the PO that is subject to the Trade Secrets Act.)
- (15) FAR 52.227-10, Filing of Patent Applications – Classified Subject Matter (DEC 2007) (Applies if the PO or any patent application involves classified subject matter.)
- (16) \*FAR 52.227-11, Patent Rights – Ownership by the Contractor (DEC 2007) (Applies if the PO includes experimental, developmental, or research work. Reports required by this clause shall be filed with the agency identified in the PO. If no agency is identified, contact Buyer’s Purchasing Agent.)
- (17) \*FAR 52.227-13, Patent Rights – Acquisition by the Government (DEC 2007) (Applies in lieu of FAR 52.227-11 if the prime contract vests ownership of patent rights in the Government.)
- (18) FAR 52.228-3, Workers’ Compensation Insurance (Defense Base Act) (APR 1984) (Applies if the PO is subject to the Defense Base Act.)
- (19) FAR 52.228-4, Workers’ Compensation and War-Hazard Insurance Overseas (APR 1984) (Applies if the PO would be subject to the Defense Base Act or the War Hazards Compensation Act but for a waiver of either requirement.)
- (20) FAR 52.228-5, Insurance – Work on a Government Installation (JAN 1997) (Applies if this PO involves work on a Government installation. Substitute “Buyer’s Purchasing Agent” for “CO.” In (b), insert “or Buyer” after “Government.” The types and amounts of insurance shall be as described in FAR 28.307-2.)
- (21) FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) (Applies if Seller is a small business concern and Buyer receives accelerated payments. Substitute “Buyer” for “Government.”)
- (22) FAR 52.233-3, Protest After Award (AUG 1996) (Substitute “Buyer’s Purchasing Agent” for “CO.” Substitute “Buyer” for “Government, except make no substitution for the first instance of “Government” in (f). In (a), substitute the following for all text prior to the initial coma: “Upon receipt of a written Stop Work order from the CO pursuant to FAR 52.233-3.” In (b)(2), substitute “20 days” for “30 days.” In (f), add after “33.104(h)(1)” the following: “and recovers those costs from Buyer.”)
- (23) FAR 52.237-2, Protection of Government Buildings, Equipment and Vegetation (APR 1984) (Applies if the PO involves services at a Government installation. Substitute “Buyer’s Purchasing Agent” for “CO.” Insert “or Buyer” after the second instance of “Government.”)
- (24) FAR 52.237-3, Continuity of Services (JAN 1991) (Substitute “Buyer’s Purchasing Agent” for the first instance of “CO” in (b). In the penultimate sentence of (b), insert “and Buyer’s Purchasing Agent’s” after “CO’s.”)

#### **15. DFARS Clauses Incorporated by Reference**

If, and only if, the prime contract is with or in support of a Department of Defense entity, the DFARS clauses referenced in this Section are incorporated by reference and apply to this PO to the extent, and with the modifications, identified below. Clauses identified by an asterisk (\*) apply to the extent, and with the Alternate(s), if any, included in the prime contract.

a. The following DFARS clauses apply to this PO:

- (1) DFARS 252.203-7002, Requirement to Inform Employees of Whistleblower Rights (SEP 2013)



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- (2) DFARS 252.204-7012, Safeguarding of Unclassified Controlled Technical Information (NOV 2013) (In (b)(1)(ii), substitute “Buyer’s Purchasing Agent” for “CO.” In (d)(5), insert “and Buyer” after “CO.” Reports required under (d) shall be made through Buyer.)
  - (3) DFARS 252.211-7007, Reporting of Government-Furnished Property (AUG 2012)
  - (4) DFARS 252.223-7008, Prohibition of Hexavalent Chromium (MAY 2001) (Substitute “Buyer’s Purchasing Agent” for “CO.”)
  - (5) DFARS 252.225-7012, Preference for Certain Domestic Commodities (FEB 2013)
  - (6) DFARS 252.225-7048, Export Controlled Items (JUN 2013)
  - (7) DFARS 252.227-7013, Rights in Technical Data – Non-Commercial Items (FEB 2014)
  - (8) DFARS 252.227-7014, Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation (FEB 2014)
  - (9) DFARS 252.227-7015, Technical Data – Commercial Items (JUN 2013)
  - (10) DFARS 252.227-7019, Validation of Asserted Restrictions – Computer Software (SEP 2011)
  - (11) DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data (JUN 2013)
  - (12) DFARS 252.244-7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (JUN 2013)
  - (13) DFARS 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (Substitute “Buyer” for “Government” and “Buyer’s Purchasing Agent” for “CO.”)
- b. The following DFARS clause applies if the PO value is greater than or equal to \$500,000:
- (1) DFARS 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises and Native Hawaiian Small Business Concerns (SEP 2004) (In (c), substitute “Buyer’s Purchasing Agent” for the first instance of “CO.” In (f)(1), substitute “Buyer” for “Contractor.” Buyer shall have no liability to Seller for any incentive payment under this clause unless and until the Government provides said incentive payment to Buyer.)
- c. The following DFARS clause applies if the PO value is greater than or equal to \$650,000:
- (1) DFARS 252.225-7006, Quarterly Reporting of Actual Contract performance Outside the U.S. (OCT 2010) (Delete (f).)
- d. The following DFARS clause applies if the PO value is greater than or equal to \$1.5 million:
- (1) DFARS 252.225-7033, Waiver of United Kingdom Levies (APR 2003) (Applies if Seller is a United Kingdom firm. Substitute “Buyer’s Purchasing Agent for “CO.” In the second sentence of (a), insert “and Buyer” after “U.S. Government.”)
  - (2) first-tier subcontractor. Delete (c)(2). Reports shall be submitted to Buyer’s Purchasing Agent only.)
- e. The following DFARS clauses apply as indicated:
- (1) DFARS 252.211-7003, Item Unique Identification and Valuation (DEC 2013) (Applies if the PO requires unique item identification as specified elsewhere in this PO. Substitute Buyer’s Purchasing Agent” for “CO.” Seller shall submit all reports required under this clause to Buyer.)
  - (2) \*DFARS 252.222-7000, Restrictions on Employment of Personnel (MAR 2000) (Applies if the PO is for services to be performed in whole or in part within a “noncontiguous State,” as defined in FAR 22.7001, and the unemployment rate in that noncontiguous State exceeds the national average unemployment rate as determined by the Secretary of Labor. In the blank, insert “the noncontiguous State where the Work is being performed.”)
  - (3) DFARS 252.223-7001, Hazard Warning Labels (DEC 1991) (Applies if the PO requires the delivery of hazardous materials.)





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- (4) DFARS 252.223-7002, Safety Precautions for Ammunition and Explosives (MAY 1994) (Applies if the PO involves ammunition or explosives as defined in the clause. Insert “or Buyer” after “Government,” except: (A) in (b)(2), (c)(4), and (g)(1)(i) insert “and Buyer” after “Government” and (B) in (c)(3) substitute “Buyer” for “Government.” Substitute “Buyer’s Purchasing Agent” for “CO.” In (g)(1)(ii), delete “prime” and “,” substituting its name for references to “the Government” and add “and Buyer’s Purchasing Agent” after “Contractor.”)
- (5) DFARS 252.223-7003, Change in Place of Performance – Ammunition and Explosives (DEC 1991) (Applies if the PO involves ammunition or explosives as defined in DFARS 252.223-7002. Substitute “Buyer’s Purchasing Agent” for “CO.” Insert “or Buyer” after “Government.” In (a), delete “in the ‘Place of Performance’ provision of this solicitation.”)
- (6) DFARS 252.223-7006, Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 2012) (Applies to any services performed at a DoD installation. Alternate I (NOV 1995) applies if included in the prime. In (c), insert “and Buyer” after “Government.”)
- (7) DFARS 252.223-7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (SEP 1999) (Applies if the PO is for development, production, manufacture or purchase of arms, ammunition and explosives or when arms, ammunition or explosives will be provided to Seller as Government Furnished Property. In (b), substitute “all” for “the following.”)
- (8) DFARS 252.225-7001, Buy American Act and Balance of Payments Program (DEC 2012) (Applies, in lieu of FAR 52.225-1, to any portion of the PO subject to the Buy American Act.)
- (9) DFARS 252.225-7007, Prohibition on Acquisition of U.S. Munitions List Items from Communist Chinese Military Companies (SEP 2006) (Applies if the PO involves the delivery of items covered by the U.S. Munitions List.)
- (10) DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (JUL 2009) (Applies if the PO involves the delivery of items containing specialty metals. Delete (d).)
- (11) DFARS 252.225-7011, Restriction on Acquisition of Supercomputers (JUN 2005) (Applies if the PO involves the delivery of supercomputers.)
- (12) DFARS 252.225-7013, Duty-Freed Entry (OCT 2013) (Applies, in lieu of FAR 52.225-8, if the PO involves the delivery of supplies that will enter into the Customs Territory of the U.S. In (c), substitute “Buyer” for “Government” and “Buyer’s Purchasing Agent” for “CO.” Contact Buyer’s Purchasing Agent to obtain the prime contract number and identity of the CO.)
- (13) DFARS 252.225-7015, Restrictions on Acquisition of Hand or Measuring Tools (JUN 2005) (Applies if the PO involves the delivery of hand or measuring tools.)
- (14) DFARS 252.225-7019, Restrictions on Acquisition of Anchor and Mooring Chain (DEC 2009) (Applies if the PO involves the delivery of shipboard anchor or mooring chain four inches or less in diameter.)
- (15) DFARS 252.225-7021, Trade Agreements (OCT 2013) (Applies, in lieu of FAR 52.225-5, to any portion of the PO subject to the Trade Agreements Act, except to the extent purchase from foreign sources is restricted by any other provision of this PO. Alternate II (OCT 2011) applies if the PO is for end products in support of operations in Afghanistan)
- (16) \*DFARS 252.225-7024, Requirements for Products or Services from Iraq or Afghanistan (DEC 2013)
- (17) DFARS 252.225-7025, Restriction on Acquisition of Forgings (DEC 2009) (Applies if this PO involves the delivery of forging items or items that contain forgings.)
- (18) \*DFARS 252.225-7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan (SEP 2013)
- (19) DFARS 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (Applies if the PO involves the purchase of supplies or services for international military education training or Foreign Military Sales.)



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- (20) DFARS 252.225-7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police (SEP 2013) (Applies if the PO is for the acquisition of textile components to be supplied to the Afghan National Army or the Afghan National Police for purposes of production of uniforms.)
- (21) DFARS 252.225-7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (DEC 2006) (Applies if carbon, alloy or armor steel plate will be delivered for use in a Government-owned facility or a facility under control of the DoD or will be purchased by Seller for use in a Government-owned facility or a facility under the control of the DoD.)
- (22) DFARS 252.225-7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (Applies if the PO involves the delivery of air circuit breakers for naval vessels.)
- (23) DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the U.S. (FEB 2013) (Applies if Seller personnel are authorized to accompany U.S. Armed Forces deployed outside the U.S. in contingency operations, humanitarian or peacekeeping operations, or other military operations or military exercises, when designated by the Combatant Commander. Substitute "Buyer's Purchasing Agent" for "CO," except: (A) make no substitution in (c)(4); and (B) insert "or Buyer's Purchasing Agent" after "CO" in (h)(1).)
- (24) DFARS 252.225-7043, Anti-Terrorism/Force Protection Policy for Defense Contractors Outside the U.S. (MAR 2006) (Applies if the PO involves performance or travel outside the U.S. Does not apply if Seller is a foreign corporation wholly owned by a foreign Government. Seller may obtain the information specified in (d) from Buyer.)
- (25) \*DFARS 252.227-7038, Patent Rights – Ownership by the Contractor (Large Business) (JUN 2012) (Applies in lieu of FAR 52.227-11 if: (1) Seller is not a small business or nonprofit organization; and (2) the PO is for experimental, developmental, or research work. Throughout (k), substitute "Buyer's Purchasing Agent" for "CO" and "Buyer" for "Government.")
- (26) \*DFARS 252.227-7039, Patents – Reporting of Subject Inventions (APR 1990) (Applies in lieu of FAR 52.227-11 if: (1) Seller is not a small business or nonprofit organization; and (2) the PO is for experimental, developmental, or research work.)
- (27) DFARS 252.235-7002, Animal Welfare (DEC 2011) (Applies if the PO involves research of live vertebrate animals. Substitute "Buyer's Purchasing Agent" for "CO.")
- (28) DFARS 252.235-7003, Frequency Authorization (DEC 1991) (Applies if the PO involves the development, production, construction, testing, or operation of a device requiring a frequency authorization. Substitute "Buyer's Purchasing Agent" for "CO.")
- (29) DFARS 252.235-7004, Protection of Human Subjects (JUL 2009) (Applies if the PO involves research with human subjects. In (e), substitute "Buyer's Purchasing Agent" for "CO." All communications and notices to/from Seller to/from the CO shall occur through Buyer.)
- (30) DFARS 252.237-7010, Prohibition on Interrogation of Detainees by Contractor Personnel (JUN 2013) (Applies if the PO requires Seller personnel to interact with detainees in the course of their duties.)
- (31) DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees (JUN 2013) (Applies if the PO requires Seller personnel to interact with detainees in the course of their duties.)
- (32) DFARS 252.239-7000, Protection Against Compromising Emanations (JUN 2004) (Applies if the PO involves information technology that requires protection against compromising emanations. In (b), substitute "Buyer's Purchasing Agent" for "CO." In (c), insert "and Buyer" after "Government." In (d) insert, "or Buyer" after "Government.")
- (33) DFARS 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services (DEC 1991) (Applies if the PO involves securing telecommunications.)
- (34) DFARS 252.246-7003, Notification of Potential Safety Issues (JUN 2013) (Applies if the PO is for: (1) parts identified as critical safety items; (2) systems and subsystems, assemblies and subassemblies integral to a system; or (3) repair, maintenance, logistics support or overhaul services for systems and



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subsystems, assemblies, subassemblies and parts integral to a system. Seller shall copy Buyer's Purchasing Agent on all notifications pursuant to this clause.)

- (35) DFARS 252.247-7023, Transportation of Supplies by Sea (JUN 2013) (Applies in lieu of FAR 52.247-7023 in all POs for ocean transportation of supplies. In (g), substitute "Buyer's Purchasing Agent" for "CO" and "Buyer" for "Government". In the first sentence of (g), insert a period after "Contractor" and delete the rest of the sentence. Delete (f) and (g) if the PO is valued at or below \$150,000).

**16. Additional Clauses Incorporated by Reference**

The clauses below are incorporated by reference and apply to this PO to the extent and with the modifications listed below:

- (1) 52.225-4503, Restriction of Critical Items and Components (FEB 1993) (Seller may obtain a copy of this clause and identification of the specific items to which it applies from Buyer.)
- (2) 52.247-4505, Transportation Security Requirements (FEB 2010) (Applies if the supplies furnished under this PO are qualified as sensitive in accordance with DoD 5100.76-M (Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives), or are shipped as DOT Hazard Class A or B Explosives. Seller may obtain a copy of this clause from Buyer.)
- (3) 52.247-4551, Special Transport/Loading Requirements (Hazardous) (FEB 1996) (Substitute "Buyer's Purchasing Agent" for "CO" and "Buyer" for "Government." Seller may obtain a copy of this clause from Buyer.)



## REPRESENTATIONS AND CERTIFICATIONS FOR POS UNDER A UNITED STATES GOVERNMENT CONTRACT

As used in these representations and certifications, the term “solicitation” shall mean the solicitation for the Prime Contract.

### 1. **FAR 52.213-3, Offeror Representations and Certifications – Commercial Items (NOV 2013)**

(This certification applies whether Seller intends to furnish commercial or non-commercial items.)

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

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the U.S. and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Inverted domestic corporation”, as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation that used to be incorporated in the U.S., or used to be a partnership in the U.S., but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;



(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

“Sensitive technology”—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

“Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the U.S.



(b) Intentionally omitted.

(c) Seller must complete the following representations when the PO will be performed in the U.S. or its outlying areas. Check all that apply.

(1) *Small business concern.* Seller represents as part of its offer that it  is,  is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if Seller represented itself as a small business concern in paragraph (c)(1) of this provision.] Seller represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if Seller represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] Seller represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if Seller represented itself as a small business concern in paragraph (c)(1) of this provision.] Seller represents, for general statistical purposes, that it  is,  is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if Seller represented itself as a small business concern in paragraph (c)(1) of this provision.] Seller represents that it  is,  is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if Seller represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] Seller represents that—

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [Seller shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if Seller represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] Seller represents that—

(i) It  is,  is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [Seller shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(8) *Women-owned business concern (other than small business concern).* [Complete only if Seller is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] Seller represents that it  is a women-owned business concern.

(9) Intentionally omitted.

(10) (i) *General.* Seller represents that either—

(A) It  is,  is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the SAM Dynamic Small Business Search database maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or



(B) It [ ] has, [ ] has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) [ ] *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* Seller represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(10)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [Seller shall enter the name of the small disadvantaged business concern that is participating in the joint venture: \_\_\_\_\_.]

(11) *HUBZone small business concern.* [Complete only if Seller represented itself as a small business concern in paragraph (c)(1) of this provision.] Seller represents, as part of its offer, that—

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It [ ] is, [ ] is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [Seller shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. Seller represents that—

(i) It [ ] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It [ ] has, [ ] has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* Seller represents that—

(i) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 cfr parts 60-1 and 60-2), or

(ii) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the PO is expected to exceed \$150,000.) By submission of its offer, Seller certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of Seller with respect to this PO, Seller shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Seller need not report regularly employed officers or employees of Seller to whom payments of reasonable compensation were made.

(f) *Buy American Act Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this PO.)

(1) Seller certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, Seller has considered components of unknown origin to have been mined, produced, or manufactured outside the U.S. Seller shall list as foreign end products those end products manufactured in the U.S. that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “U.S.” are defined in the clause of this PO entitled “Buy American Act—Supplies.”

(2) Foreign End Products:



**Line Item No. Country of Origin**


[List as necessary]

(3) Buyer will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.* (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this PO.)

(i) Seller certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, Seller has considered components of unknown origin to have been mined, produced, or manufactured outside the U.S. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “U.S.” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(ii) Seller certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

**Line Item No. Country of Origin**


[List as necessary]

(iii) Seller shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this PO entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” Seller shall list as other foreign end products those end products manufactured in the U.S. that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

**Line Item No. Country of Origin**


[List as necessary]

(iv) Buyer will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR 52.225-3 is included in this PO, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) Seller certifies that the following supplies are Canadian end products as defined in the clause of this PO entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

**Line Item No.**






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[List as necessary]

(3) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR 52.225-3 is included in this PO, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) Seller certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this PO entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:  
Canadian or Israeli End Products:

**Line Item No. Country of Origin**

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[List as necessary]

(4) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate III.* If Alternate III to the clause at 52.225-3 is included in this PO, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) Seller certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act-Free Trade Agreements-Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

**Line Item No. Country of Origin**

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[List as necessary]

(5) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this PO.)

(i) Seller certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) Seller shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

**Line Item No. Country of Origin**

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[List as necessary]



(iii) Buyer will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, Buyer will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. Buyer will consider for award only offers of U.S.-made or designated country end products unless the CO determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689)*. (Applies only if the PO value is expected to exceed \$150,000.) Seller certifies, to the best of its knowledge and belief, that Seller and/or any of its principals—

(1)  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2)  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.*

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126)*. [Seller must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) *Listed end products.*

**Listed End Product Listed Countries of Origin**



\_\_\_\_\_  
\_\_\_\_\_  
*(2) Certification. [If Buyer has identified end products and countries of origin in paragraph (i)(1) of this provision, then Seller must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]*

(i) Seller will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) Seller may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. Seller certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this PO. On the basis of those efforts, Seller certifies that it is not aware of any such use of child labor.

*(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, Seller shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—*

(1)  In the U.S. (Check this box if the total anticipated price of offered end products manufactured in the U.S. exceeds the total anticipated price of offered end products manufactured outside the U.S.); or

(2)  Outside the U.S.

*(k) Certificates regarding exemptions from the application of the Service Contract Act. (Certification by Seller as to its compliance with respect to the PO also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.)*

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). Seller  does  does not certify that—

(i) The items of equipment to be serviced under this PO are used regularly for other than Governmental purposes and are sold or traded by Seller (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the PO will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). Seller  does  does not certify that—

(i) The services under the PO are offered and sold regularly to non-Governmental customers, and are provided by Seller (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The PO services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the PO will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the PO period if the PO period is less than a month) servicing the PO; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the PO is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If Seller does not certify to the conditions in paragraph (k)(1) or (k)(2) and the CO did not attach a Service Contract Act wage determination to the solicitation, Seller shall notify Buyer as soon as possible; and

(ii) Buyer may not make an award to Seller if Seller fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact Buyer as required in paragraph (k)(3)(i) of this clause.

(1) *Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).*



(1) All offerors must submit the information required in paragraphs (1)(3) through (1)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of Seller's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting PO is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of Seller's TIN.

(3) *Taxpayer Identification Number (TIN).*

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

Seller is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

Seller is an agency or instrumentality of a foreign government;

Seller is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other \_\_\_\_\_.

(5) *Common parent.*

Seller is not owned or controlled by a common parent;

Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(m) *Restricted business operations in Sudan.* By submission of its offer, Seller certifies that Seller does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations.*

(1) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. 7874.

(2) *Representation.* By submission of its offer, Seller represents that—

(i) It is not an inverted domestic corporation; and

(ii) It is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.*

(1) Seller shall e-mail questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(2) *Representation and Certifications.* Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, Seller—

(i) Represents, to the best of its knowledge and belief, that Seller does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;



(ii) Certifies that Seller, or any person owned or controlled by Seller, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that Seller, and any person owned or controlled by Seller, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This PO includes a trade agreements certification (*e.g.*, 52.212-3(g) or a comparable agency provision); and

(ii) Seller has certified that all the offered products to be supplied are designated country end products.

## **2. FAR 52.203-2, Certificate of Independent Price Determination (APR 1985)**

(This certification applies if the PO is for a firm fixed price contract or a fixed price contract with economic price adjustment.)

(a) Seller certifies that—

(1) The prices in Seller's offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in Seller's offer have not been and will not be knowingly disclosed by Seller, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by Seller to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in Seller's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ [insert full name of person(s) in Seller's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in Seller's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If Seller deletes or modifies paragraph (a)(2) of this provision, Seller must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

## **3. FAR 52.222-38, Compliance with Veterans' Employment Reporting Requirements (SEP 2010)**

By submission of its offer, Seller represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause

## **4. FAR 52.223-4, Recovered Material Certification (MAY 2008)**

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), Seller certifies, by signing Seller's offer, that the percentage of recovered materials content for EPA-designated items



to be delivered or used in the performance of the PO will be at least the amount required by the applicable contract specifications or other contractual requirements.

5. **FAR 52.226-2, Historically Black College or University and Minority Institution Representation (OCT 2008)**

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

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

(b) *Representation.* Seller represents that it—

- o is [ ] is not a historically black college or university;
- o is [ ] is not a minority institution.