1. **TYPE OF TASK ORDER:**

CMS anticipates award of a Firm-Fixed-Price (FFP) type task order. The Total Amounts for this task order are:

|  |  |
| --- | --- |
| **Task Order Period** | **Not-to-Exceed Amount** |
| Transition-In | TBD |
| Base Period | TBD |
| Option Period 1 | TBD |
| Option Period 2 | TBD |
| Option Period 3 | TBD |
| Option Period 4 | TBD |
| **Total:** | **TBD** |

The Contracting Officer reserves the right to award a different contract type.

1. **PERIOD OF PERFORMANCE (JAN 2014)**

The period of performance of this task order is:TBD

1. **TASK ORDER PRICE SUMMARY:**

TBD – Reserved.

1. **STATEMENT OF WORK**

Please see Attachment 1 – Statement of Work

1. **ACCOUNTING AND APPROPRIATION DATA**

TBD. Reserved.

1. **PAYMENTS - INVOICES – (AUG 2020)**
2. **GENERAL:** Effective August 31, 2020, the contractor/vendor shall create an invoice within the Invoice Processing Platform (IPP), a secure Web-based service for federal agencies and their vendors to manage government invoicing from purchase order (PO) through payment notification. Note: All invoice terms and conditions are contract specific and may vary from contract to contract.
3. **CONTENT OF INVOICE:** [FAR 32.905](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_9.html#wp1032997) Payment Documentation and Process, provides the required content for a proper invoice.  In addition to the requirements of [FAR 32.905](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_9.html#wp1032997), the following items shall also be included on the invoice to be considered proper:
* Line item number (i.e. CLIN/SLIN as applicable)
* Contractor’s DUNS Number;
* Period of performance or delivery date of goods or services provided;
* Attachments
1. **INVOICE SUBMISSION:**    The contractor/vendor shall create an invoice from the Purchase Order (PO)/Contract via the IPP website <http://www.ipp.gov/>. For questions, call IPP Customer Support at (866) 973-3131 or email the IPP Customer Support at IPPCustomerSupport@fiscal.treasury.gov.
2. **PAYMENTS:**  The Government shall make payment of all proper invoices in accordance with the following clauses:
* FAR 52.232-33 Payments by Electronic Funds Transfer – System for Award Management,
* FAR 52.232-1 Payments
* FAR 52.212-4 Contract Terms and Conditions – Commercial Items (If applicable)

Payment shall be made upon acceptance by the Contracting Officer’s Representative (COR)in accordance with the applicable FAR Inspection and Acceptance clause and the Contracting Officer’s approval, as appropriate.

Reimbursement for invoices submitted under this contract shall be made no later than 30 calendar days after receipt of a proper invoice from the Contractor requested at the paying office designated above. Contracts with a 15-day payment term are not subject to interest payments until after day 30.

1. **INTEREST ON OVERDUE PAYMENT:**The Prompt Payment Act, Public Law 97-177 (96 Stat.85.31 U.S.C. 1801) is applicable to payments under this contract and requires the payment of interest on payments made more than 30 calendar days after receipt of a proper invoice in IPP.

Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and 5 CFR 1315.

1. **CONTRACTOR PAST PERFORMANCE EVALUATION(S) (OCT 2014)**
2. **General**:

In accordance with Federal Acquisition Regulation (FAR) 42.15, Contractor Performance Information, past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Additional interim performance evaluations may be prepared at Contracting Officer discretion, as necessary.

CMS will utilize the Contractor Performance Assessment Reporting System (CPARS), the Government-wide evaluation reporting tool for all past performance reports on contracts and orders, as appropriate. CPARS is a secure Internet website located at <https://www.cpars.gov>.

1. **CPARS Process**:
	1. **CPARS Training**: Contractors may obtain CPARS training material and register for on-line training [https://www.cpars.gov](https://www.cpars.gov/).
	2. **Post-Award Contract Registration**: CMS is responsible for registering the contract in CPARS within 30 calendar days of contract award. The Contractor shall:
2. Designate at least one (1) point of contact that will be responsible for serving as the Contractor’s Representative (CR). Additional CRs may also be identified; and,
3. Provide the CMS Contract Specialist with the name(s) and email address(es) of the CPARS point(s) of contact.

Once CMS registers the contract in CPARS, the CR(s) will receive an automated CPARS email message that contains User IDs and instructions for creating a password for future past performance evaluation processing.

1. **Interim, Annual and Final Past Performance Evaluation Reports**:
	* 1. **Issuing the Evaluation**: Once the CMS Assessing Official (AO) issues an evaluation to the Contractor in CPARS, the CR(s) will receive an email instructing them to login to CPARS to review the evaluation.

* + 1. **Contractor Comments:** The CR has the option to provide comments on the evaluation, indicate if they concur or do not concur with the evaluation, sign, and then return the evaluation to the AO. The CR has a total of 60 days following the AO’s evaluation signature date to submit comments. If the CR submits comments within the first 14 days following the AO’s signature date and the AO closes the evaluation, the evaluation will become available in Past Performance Information Retrieval System - Report Card (PPIRS-RC) within 1 day.

On day 15 following the AO’s evaluation signature date, the evaluation will become available in PPIRS-RC with or without CR comments and whether or not it has been closed by the AO. If no CR comments have been sent and the evaluation has not been closed, it will be marked as “Pending” in PPIRS-RC.

If the CR sends comments at any time prior to 61 days following the AO’s evaluation signature date, those comments will be reflected in PPIRS-RC within 1 day. On day 61 following the AO’s evaluation signature date, the CR will be “locked out” of the evaluation and may no longer send comments.

1. **CONTRACTOR WORK PERFORMED OUTSIDE THE UNITED STATES AND ITS TERRITORIES (JAN 2021)**

To comply with requirements of Homeland Security Presidential Directive -12 (HSPD-12) and Personal Identity Verification (PIV) of Federal Employees and Contractors, CMS must achieve appropriate security assurance for multiple CMS information systems by efficiently verifying the claimed identity of individuals working on the contract.  The Contractor and its subcontractor(s) shall not perform any activities under this contract, including the transmission of data or other information, outside of the United States (U.S.) and its Territories without the prior written approval of the Contracting Officer.  If work must be performed outside the U.S., the Contractor shall submit a request to the Contracting Officer, in writing, at least 45 calendar days prior to the work beginning.

The Contracting Officer will consider the following factors in making a decision whether to authorize the performance of work outside the U.S. and its Territories:

1. The necessity of the work to be performed outside the United States and its territories;
2. The Statement of Work under contract that will be performed outside the U.S. and its Territories;
3. Total projected dollar value of the work to be performed outside the U.S.;
4. Total projected number of labor hours and length of time to be performed for each individual employee working outside the U.S.;
5. The desired country/location where the work will be performed;
6. FAR Part 25, Foreign Acquisitions, and all other laws and regulations applicable to the performance of work outside the U.S.;
7. The contractor and/or its subcontractor(s) plans to adequately protect and secure CMS data, as well as abide by all applicable laws and regulations when work is performed outside of the U.S. and its Territories.  Plans shall include -
	1. Adequate contract terms regarding system security;
	2. Adequate contract terms regarding the confidentiality and privacy requirements for information and data protection;
	3. Adequate contract terms that are otherwise relevant, including the requirements of the Statement of Work;
	4. The Contractor’s corporate compliance plan and internal policies and procedures designed to prevent and detect violations of applicable law, regulations, rules and ethical standards by employees, agents and others; and,
8. The necessity of Government Furnished Equipment (GFE) or Contractor Owned/Contractor Operated (COCO) devices to be used outside the U.S. and verification of a secure VPN access.
9. Compliance with Executive Order 13940 Aligning Federal Contracting and Hiring Practices With the Interests of American Workers. Determine if approval will reduce opportunities for the United States contractor workers performing in the United States and if this would cause any potential effects to national security.
10. Conformance with Section 889 “Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment”, of Public Law 115-232.
11. Determination that approval is in best interest of the Government

The Contractor’s request for authorization to perform work outside the U.S. shall include supplemental information to demonstrate that the performance of the work outside the U.S. satisfies all of the above factors.  Contracting Officer approval to perform work outside the U.S. may require additional Statement of Work requirements, additional contract terms and conditions and/or Federal Acquisition Regulation (FAR) clauses to be incorporated into the contract.

1. **GOVERNMENT REPRESENTATIVES AND RESPONSIBILITIES (SEPT 2021)**

Following are the Government Representatives and their respective roles and responsibilities on this contract:

1. **Contracting Officer**

As defined in Federal Acquisition Regulation (FAR) 2.101, Definitions, and in accordance with FAR 1.602-1, Authority, “Contracting officers have authority to enter into, administer, and/or terminate contracts and make related determinations and findings.” There is no other authorized representative or any other Administrative Contracting Officer assigned to this contract to carry out a Contracting Officer’s duties, except for technical direction assigned to the Contracting Officer’s Representative, if applicable.

The Contracting Officer is: Cathryn Kim

Centers for Medicare & Medicaid Services

Office of Acquisition & Grants Management (OAGM)

Medicare Support Contracts Group (MSCG)

Division of Medicare and Marketplace Contracts (DMMC)

ATTN: Cathryn Kim

7500 Security Blvd.

Mail-stop: B3-30-03

Baltimore, MD 21244-1850

Phone: 410-786-0359

Email Address: Cathryn.Kim@cms.hhs.gov

1. **Contract Specialist**

Notwithstanding any of the other provisions of this Contract, the Contract Specialist will assist the Contracting Officer with his/her responsibilities as defined in the FAR.

The Contract Specialist is Kelli King

Centers for Medicare & Medicaid Services

Office of Acquisition & Grants Management (OAGM)

Medicare Support Contracts Group (MSCG)

Division of Medicare and Marketplace Contracts (DMMC)

ATTN: Kelli King

7500 Security Blvd.

Mail-stop: B3-30-03

Baltimore, MD 21244-1850

Phone: 410-786-2046

Email Address: Kelli.King@cms.hhs.gov

1. **Contracting Officer’s Representative**

The Contracting Officer’s Representative (COR), as defined in FAR 2.101, Definitions, is: TBD

Centers for Medicare & Medicaid Services

ATTN: TBD

7500 Security Blvd.

Mail-stop: TBD

Baltimore, MD 21244-1850

Phone: TBD

Email Address: TBD

In accordance with FAR 1.602-2(d), Responsibilities, the COR’s delegated responsibilities are identified in the Contracting Officer’s appointment memorandum, a copy of which will be furnished to the contractor.

The COR will serve as the primary liaison between the Contractor and the Contracting Officer and perform duties within the limitations of the COR’s responsibilities in accordance with FAR 1.602-2(d).

Technical direction must be within the general scope of the work stated in the contract. The term "technical direction" is defined to include, without limitation, the following:

(1) Directions to the Contractor which direct the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual technical requirements as identified in the Statement of Work or Performance Work Statement; or

(2) Provision of information to the Contractor, which assists in the interpretation of drawings, specifications, or technical portions of the work description.

Technical direction within the scope of the contract, shall be “in writing” whenever possible and routed through the CO prior to release to the Contractor.  If technical direction is verbally communicated, the COR must immediately confirm its direction in writing. Where doubt exists as to whether proposed technical direction is within or outside the scope of the contract, the CO shall be contacted.

If, in the opinion of the Contractor, any instruction or direction issued by a Government representative constitutes a change to the contract or constitutes a “Change Order” as defined in FAR 2.101, Definitions, the Contractor shall follow the instructions identified in FAR 52.243-7 Notification of Changes.

The COR “has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract nor in any way direct the contractor or its subcontractors to operate in conflict with the contract terms and conditions” See FAR 1.202-2(d)(5). ).  The COR’s authority is not re-delegable and the COR may be personally liable for unauthorized acts in accordance with FAR 1.202-(d)(7)(iv) and (v).  For example, the COR does not have the authority to:

1. Make changes to contract terms and conditions;
2. Direct the contractor to perform work or make deliveries not specifically required under the contract;
3. Waive or relax the Government’s rights with regard to the Contractor’s compliance with the specifications, price, delivery or any other terms or conditions of the contract;
4. Make any commitments or approve any actions that would create any financial obligation on the part of the Government; or
5. Issue direction that constitutes a “change” as defined in:

FAR 52.243-1, Changes – Fixed Price;

FAR 52.243-2, Changes – Cost Reimbursement;

FAR 52.243-3, Changes – Time and Material and Labor Hour;

FAR 52.243-4, Changes; or,

FAR 52.243-5, Changes and Changed Conditions.

**In addition to the above responsibilities, the COR and/or Contractor shall immediately notify the Contracting Officer of any contractual concerns related to the following:**

1. Personal Services: FAR 37.104(a) provides that, “[a] personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor’s personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.”

Under this contract, the services to be performed do not require the Contractor or the Contractor’s personnel to exercise personal judgement and discretion on behalf of the Government. Rather, the Contractor’s personnel will act and exercise personal judgement and discretion on behalf of the Contractor.  The services to be performed under this contract are not for personal services as defined by FAR 37.104.

Both the Government and the Contractor have a responsibility to monitor contract activities.  The CO must be notified immediately if at any time during contract performance the interaction between the Government representative and Contractor personnel constitutes or is perceived to constitute personal services.  Both the Government and Contractor personnel must exercise caution to ensure that service contracts not personal in nature avoid even the appearance of a personal services contract.

1. Inherently Governmental Functions:  The agency shall not use contractors for the performance of inherently governmental functions unless issued under statutory authority See FAR 7.5 Inherently Governmental Functions. As defined in FAR 2.101, “Inherently Governmental Function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Inherently governmental functions DO NOT normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials.

FAR 7.503(c) provides a list of examples of functions considered to be inherently governmental functions or which shall be treated as such.

To this effect, during contract performance, care should be taken to ensure that any change or expansion in scope of the requirement does not include inherently governmental functions.  Further, due to the nature of a given requirement, there is a potential for close working relationships to develop between Government and Contractor personnel; however, care should be taken to ensure that any familiarity established between the Government and Contractor personnel never promotes or fosters an environment that allows for the assignment of inherently governmental functions to contractor employee(s).

1. Unauthorized Commitments:  In carrying out his/her duties, in accordance with FAR [1.602-2](https://www.acquisition.gov/content/part-1-federal-acquisition-regulations-system#i1126427)(d)(5), the COR “[h[as no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract, or in any way direct the Contractor, or its Subcontractors, to operate in conflict with the contract terms and conditions.”  Doing so constitutes an “unauthorized commitment.”  The Contracting Officer is the only individual with the authority to enter into an agreement on behalf of the Government. An unauthorized commitment is defined as “an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.”  FAR 1-602-3(a).  Examples of unauthorized commitments include, but are not limited to, the following:
* Orders placed with a Contractor without a valid contractual instrument in place.
* Directing any Contractor to do additional work, in excess of the contract value, or work beyond the Period of Performance.
* Authorize new work to a contract without notifying the Contracting Officer (CO) or Contract Specialist (CS) and having a modification in place for the new work.
* Directing the Contractor, in any way that could change the terms and conditions of the contractual instrument or be deemed outside the Scope of the contract.

Unauthorized commitments are a serious matter and may result in personal liability on the part of the employee who committed the unauthorized commitment.  Ratification,  is “the act of approving an unauthorized commitment by an official who has the authority to do so.”  FAR 1.602-3(a)

1. **CONFLICT OF INTEREST (OCT 2020)**
2. **General:**  The contractor and the services provided under this contract shallbe free, to the greatest extent possible, of all Organizational and Personal Conflicts of Interest.  Consistent with these terms and conditions, all references to Organizational and/or Personal Conflicts of Interests will be referred to individually or collectively, as Conflicts of Interest (COI).  Except as defined by these terms and conditions and in accordance with FAR 9.503, the Contracting Officer shall not maintain a contract with a contractor the Contracting Officer (CO) determines has, or has the potential for, an unresolved COI.
3. **Definitions:**

**Actual COI**– The COI is either currently in existence as determined by the contractor or CMS.  This form of COI will require avoidance, neutralization or mitigation acceptable to CMS.

**Affiliates** – Associated business concerns or individual(s) if, directly or indirectly, either one controls or can control the other; or a third party controls or can control both.

**Apparent (Perceived) COI** – The COI on first observation appears to be an actual or potential COI, but may or may not be after analysis.

**Avoidance** –To prevent the occurrence of a COI through actions such as exclusion of sources or modification of requirements. Avoidance precludes the conflict.

**Contractor** – The term contractor is used synonymously with offeror.

**Financial Interests/Relationships** – A direct or indirect ownership or investment interest (including a stock option or non-vested interest) in any entity that exists through equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest

**Mitigation** – To reduce the effects of a COI to an acceptable level of risk so

that the Government’s interest with regard to fair competition and/or contract performance are not impaired. The conflict remains but action was

taken that minimizes the impact of the conflict to an acceptable level

of risk.

**Mitigation Plan** – The contractor’s written approach to mitigating a COI as documented in J.4 Section B.

**Neutralization** – To counteract, through a specific action, the effects of potential or actual COI. The conflict remains, but the impact of the conflict has been negated.

**Organizational Conflict of Interest** – Occurs when other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

**Personal Conflicts of Interest** – A situation in which a person has a financial interest, personal activity, or relationship that could impair the person’s ability to act impartially and in the best interest of the Government when performing under this contract.

**Potential COI** –A future situation or circumstance that would create a conflict of interest.

**Three (3) Types of COIs include**:

| Conflict Types | Definitions |
| --- | --- |
| Biased Ground Rules | Consists of situations where a contractor and/or its affiliate(s), as part of its performance of a Government contract, has helped (or is in a position to help) set the ground rules for another Government contract by, for example, writing the statement of work or the specifications, or establishing source-selection criteria.  In these “biased ground rules” cases, the primary concern is that the entity could skew the competition, whether intentionally or not, in favor of itself and/or its affiliates. |
| Impaired Objectivity | Consists of situations where a contractor and/or its affiliate(s) has an interest (typically financial) that may conflict with the interest of the Government to whom the contractor has a contractual obligation, and where the entity’s work under the Government contract could give the contractor the opportunity to benefit its other business interests.  If the entity is providing recommendations, judgment or advice, and its other business interests could be affected by that recommendation, judgment or advice, it’s objectivity may be impaired.  An example is where the entity was evaluating itself or evaluating an affiliate or a competitor, either through an assessment of performance under another contract or an evaluation of proposals |
| Unequal Access to Information | “Unfair” access to non-public information – Consists of situations where a contractor and/or its affiliate(s) has access to nonpublic information (including proprietary information and non-public source-selection information) as part of its performance of a Government contract and that information may provide the entity with a competitive advantage in a later competition for a Government contract.  In these “unequal access to information” cases, the concern is limited to the risk of the contractor and/or its affiliates gaining an unfair competitive advantage; there is no issue of bias.  Note:  Incumbency alone does not constitute “unequal access to information.” |

1. **Significant Potential Conflict of Interest:**
2. Nature of Conflict: Although not all inclusive, the following are considered to be an actual potential or apparent COI with the work to be performed under this contract. The contractor shall promptly notify the CO if it is an entity, or affiliated with an entity, where any of the following circumstances exist:

* + - * 1. Biased Ground rules, impaired objectivity or unequal access to information as explained in the definitions above and/or;
				2. Within the three types of conflicts of interest, the CO has identified the following specific circumstances of conflicts:

N/A – at the time of this RFQ.

1. Proposed Restraint on future Contractor Activities: CMS is proposing to restrain future contractor activities as follows:

N/A – at the time of this RFQ.

1. **Conflict of Interest Oversight and Mitigation Plan:**
	1. Conflict of Interest Oversight Program: The contractor shall maintain an effective COI Oversight Program throughout the performance of the contract which includes procedures to monitor and disclose all Organizational and Personal Conflicts of Interest. A COI oversight program should include the monitoring of personal conflicts of interest such as, but not limited to:
		1. Managers or Key Personnel who would be, or are involved with, the performance of this contract,
		2. Governing Body Members (e.g., Board of Directors; Trustees); and
		3. Principals of the organization as defined by FAR 52. 203-13, Contractor Code of Business Ethics and Conduct.

2. Mitigation Plan: At any time during the performance of the contract if an actual, potential, or apparent COI is identified whether by the CO, the contractor or otherwise, the contractor shall submit a mitigation plan (J.x Contractor/Offeror COI Submission Template) within 30 days unless otherwise specified by the CO. It is the contractor’s responsibility under the terms and conditions to provide timely notification to the CO those COIs that are self-identified.  The CO will notify the contractor regarding the specifics for submission. The Government will review the submission at which time a determination will be made whether a COI has been satisfactorily mitigated or if further action is necessary and will notify the contractor accordingly.  In cases where a COI cannot be, or has not been, mitigated to the Government’s satisfaction, the Government may take the following actions (this list is not all inclusive):

1. Request a waiver in accordance with FAR 9.503 waiver, from the Head of the Contracting Activity;
2. Make changes to the requirements of the contract;
3. Require a subcontractor change (if the conflict lies with the subcontractor); and/or
4. Terminate the contract in whole or in part.

**Subcontractor Flow-Down Terms and Conditions:** The prime contractor is responsible for avoiding, neutralizing and mitigating all actual, potential, or apparent COIs of its subcontractors, in accordance with these terms and conditions.  Therefore, the prime contractor shall flow-down terms and conditions 20 Conflict of Interest and Compliance, of this contract in all subcontracts.  For subcontractors, wherever the term “contractor” is used, insert “subcontractor.”

1. **CMS INFORMATION SECURITY (OCT 2020)**

All CMS information shall be protected from unauthorized access, use, disclosure, duplication, modification, diversion, or destruction, whether accidental or intentional, in order to maintain the security, confidentiality, integrity, and availability of such information.  Therefore, if this contract requires the contractor to provide services (both commercial and non-commercial) for Federal Information/Data, to include any of the following requirements:

* Process any Information/Data; or
* Store any Information/Data (includes “Cloud” computing services); or
* Facilitate the transport of Information/Data; or
* Host/maintain Information/Data (including software and/or infrastructure developer/maintainers); or
* Have access to, or use of, Personally Identifiable Information (PII), including instances of remote access to, or physical removal of, such information beyond agency premises or control,

The contractor shall become and remain compliant with all Statement of Work (SOW), Statement of Objectives (SOO), Performance Work Statement (PWS) and CMS Information Security requirements located at <https://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/Info-Security-Library-Items/CMS-Security-and-Privacy-Language-for-Procurements>.  The requirements cover **all** CMS contracts and associated deliverables, which are required on a “per contractor” basis.

The contractor shall ensure that the following Federal information security standards are met for all of its CMS contracts:

* **Federal Information Security Management Act (FISMA)** – FISMA information can be found at <https://csrc.nist.gov/projects/risk-management>.  FISMA requires each Federal agency to develop, document, and implement an agency-wide program to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source; and,
* **Federal Risk and Authorization Management Program (FedRAMP)** – FedRAMP information can be found at <https://www.gsa.gov/technology/government-it-initiatives/fedramp>.  The FedRAMP is a government-wide program that provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services.

The Contractor shall include in all awarded subcontracts the FISMA/FedRAMP compliance requirements set forth at the CMS Information Security website at <https://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/Info-Security-Library-Items/CMS-Security-and-Privacy-Language-for-Procurements>.

1. **HIPAA BUSINESS ASSOCIATE CLAUSE (OCT 2014)**

All Protected Health Information (PHI), as defined in 45 C.F.R. §160.103, that is relevant to this Contract, shall be administered in accordance with theHealth Insurance Portability and Accountability Act of 1996 ("HIPAA," 42 U.S.C. § 1320d), as amended, as well as the corresponding implementing regulations and this HIPAA Business Associate Clause.

1. **Definitions**:

All terms used herein and not otherwise defined, shall have the same meaning as in HIPAA, as amended, and the corresponding implementing regulations. Non-HIPAA related provisions governing the Contractor's duties and obligations, such as those under the Privacy Act and any applicable data use agreements, are generally covered elsewhere in the Contract.

The following definitions apply to this Contract Clause:

"**Business Associate**'' shall mean the Contractor (and/or the Contractor’s subcontractors or agents) if/when it uses individually identifiable health information on behalf of CMS, i.e. PHI, to carry out CMS’ HIPAA-covered functions.

"**Covered Entity**" shall mean the portions of CMS that are subject to the HIPAA Privacy Rule.

"**Secretary**" shall mean the Secretary of the Department of Health & Human Services or the Secretary's designee.

1. **Obligations and Activities of Business Associate:**

Except as otherwise provided in this Contract, Business Associate, as defined above, shall only use or disclose PHI on behalf of, or to provide services to, Covered Entity in accordance with this Contract and the HIPAA Privacy and Security Rules.

Business Associate shall document in writing the policies and procedures that will be used to meet HIPAA requirements. The policies and procedures shall include the following, at a minimum:

1. Business Associate shall not:
2. Use or disclose PHI that is created, received, maintained or transmitted by Business Associate from, or on behalf of, Covered Entity other than as permitted or required by this Contract or as required by law;
3. Sell PHI; or,
4. Threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any individual for:
	* 1. Filing a complaint under 45 CFR § 160.306;
		2. Testifying, assisting or participating in an investigation, compliance review, proceeding or hearing under 45 CFR Part 160; or
		3. Opposing any act or practice that is unlawful under HIPAA, provided there is a good faith belief that the practice is unlawful, the manner of opposition is reasonable, and the opposition does not involve the disclosure of PHI in violation of subpart E of Part 164.
5. Business Associate shall:
	1. Have a security official who will be responsible for development and implementation of its security policies and procedures, including workforce security measures, to ensure proper security awareness and training (including security incident response and reporting), and security incident procedures, in accordance with this Contract, including this HIPAA Business Associate Clause and the Contract’s clause entitled “CMS Information Security.”
	2. Use administrative, physical and technical safeguards to prevent use or disclosure of PHI created, received, maintained or transmitted by Business Associate from, or on behalf of Covered Entity only as provided for by this Contract. In doing so, it shall implement policies and procedures to address the following and, where applicable, ensure that such policies and procedures are also in conformance with this Contract’s clause entitled “CMS Information Security:”
6. Prevent, detect, contain and correct security violations through the use of:
	* + 1. Risk analyses (including periodic technical and nontechnical evaluations);
			2. Appropriate risk management strategies, including system activity review;
			3. Information access procedures for approving individual’s access rights to PHI (including the implementation of workforce security measures to ensure continued appropriate role-based access to PHI), and technical policies and procedures to ensure compliance with grants of access (including unique user identification and tracking of users) and;
			4. The imposition of sanctions for violations.
7. Limit physical access to its electronic information systems and the facility or facilities in which they are housed.
8. Implement policies, procedures and physical security measures that will limit access to PHI through workstations and other devices, including access through mobile devices.
9. Implement media controls covering the movement of devices containing PHI within or outside of the Business Associate’s facility as well as the disposal and reuse of media containing PHI.
10. Implement appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability (including the use of contingency plans) of any electronic protected health information ("EPHI") it creates, receives, maintains or transmits from, or on behalf of the Covered Entity to prevent impermissible use, disclosure, maintenance or transmission of such EPHI. In the establishment of such safeguards, Business Associate shall consider its size, complexity and capabilities, as well as its technical infrastructure, and its hardware and software security capabilities.

* 1. Assess, and implement, where appropriate, any addressable implementation specifications associated with applicable PHI security standards.
	2. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Contract.
	3. Comply with the following Incident Reporting:
		+ - 1. Report to Covered Entity any security incident/breach involving unsecured PHI, of which it becomes aware, including those of its agents and subcontractors. The Business Associate shall report any violation of the terms of this contract involving PHI and any security incidents/breaches involving unsecured PHI to CMS within one (1) hour of discovery in accordance with the CMS Risk Management Handbook (RMH), specifically “RMH Vol II Procedure 7-2 Incident Handling Procedure” and “RMH Vol III Standard 7-1 Incident Handling.” These procedures can be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/Information-Security-Library.html> In addition, the Business Associate will also notify the CMS Contracting Officer and the Contracting Officer’s Representative (COR) by email within one (1) hour of identifying such violation or incident.
				2. Upon Covered Entity's knowledge of any material security incident/breach by Business Associate, Covered Entity will provide an opportunity for Business Associate to cure the breach or end the violation consistent with the termination clause of this Contract.  *See also* paragraph D. Term of Clause below.
	4. Ensure that any agent or subcontractor agrees through a written contract, or other legally enforceable arrangement, to the same restrictions and conditions that apply through this HIPAA Contract Clause, when creating, receiving, maintaining or transmitting PHI from, or on behalf of, Covered Entity.
	5. Upon Covered Entity’s request:
1. Provide the Covered Entity or its designee with access to the PHI created, received, maintained or transmitted by Business Associate from or on behalf of the Covered Entity in the course of contract performance in order to ensure Covered Entity’s ability to meet the requirements under 45 CFR § 164.524.
2. Amend PHI as Covered Entity directs or agrees to pursuant to 45 CFR §

164.526.

* 1. Make its facilities and any books, records, accounts, and any sources of PHI, including any policies and procedures, that are pertinent to ascertaining its own compliance with this contract or the Covered Entity’s compliance with the applicable HIPAA requirements, available to Covered Entity, or, in the context of an investigation or compliance review, to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the various rules implementing the HIPAA.
	2. Document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
	3. Provide to Covered Entity, or an individual identified by the Covered Entity, information collected under this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
	4. Make reasonable efforts to limit the PHI it uses, discloses or requests to the minimum necessary to accomplish the intended purpose of the permitted use, disclosure or request.
1. **Obligation of Covered Entity**

Covered Entity shall notify Business Associate of any:

1. Limitation(s) in its Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
2. Changes in, or revocation of, permission by an Individual to use or disclose their PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and,
3. Restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
4. **Term of Clause**
5. The term of this Clause shall be effective as of date of Contract award,and shall terminate when all of the PHI provided to Business Associate by the Covered Entity or a Business Associate of the Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity in accordance with “CMS Information Security” procedures. Business Associate shall not retain any PHI.
6. Security Incident/Breach:

Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall take action consistent with the terms of this Contract, and, as appropriate, the following:

1. Federal Acquisition Regulation (FAR) Contracts – Covered Entity may:
2. Terminate this Contract in accordance with FAR Part 49, Termination of Contracts, if the Business Associate does not cure the security incident/breach within the time specified by Covered Entity and/or cure is not possible; or,
3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
4. Other Agreements –Covered Entity shall either:
5. Provide an opportunity for Business Associate to cure the breach or end the violation consistent with the termination terms of this Contract. Covered Entity may terminate this Contract for default if the Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or,
6. Consistent with the terms of this Contract, terminate this Contract for default if Business Associate has breached a material term of this Contract and cure is not possible; or,
7. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
8. Returning or Destroying PHI:

Business Associate, as defined above, which includes subcontractors or agents of the Contractor, shall:

1. Upon expiration or termination of this Contract, for any reason, return or destroy all PHI received from Covered Entity or another Business Associate of the Covered Entity, as well as any PHI created, received, maintained or transmitted from or on behalf of Covered Entity, or another Business Associate of the Covered Entity, in accordance with this contract, including the “CMS Information Security” clause.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon such notice that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
3. **Miscellaneous**

A reference in this Contract to a section in the Rules issued under HIPAA means the section as in effect or as amended.

The respective rights and obligations of Business Associate under paragraph D.3.b of the section entitled "Term of Clause" shall survive the termination of this Contract.

Any ambiguity in this Contract clause shall be resolved to permit Covered Entity to comply with the Rules implemented under HIPAA.

1. **CMS SECURITY CLAUSE (May 2018)**
2. **Applicability**

In accordance with OMB Memorandum M-05-24, Implementation of Homeland Security Presidential Directive 12 (HSPD-12): Policy for a Common Identification Standard for Federal Employees and Contractors, dated August 27, 2004, and Federal Information Processing Standard (FIPS) PUB Number 201-2, Personal Identity Verification (PIV) of Federal Employees and Contractors, CMS must achieve appropriate security assurance for multiple applications by efficiently verifying the claimed identity of individuals seeking physical access to Federally controlled government facilities and/or logical access to federally controlled information systems.  Contractors that require routine physical access to a CMS facility and/or routine access to a CMS federally controlled information system will be required to obtain a CMS issued PIV, PIV-I or Locally Based Physical Access card.  FIPS PUB 201-2 specifies the architecture and technical requirements for a common identification standard for Federal employees and Contractors.

When a PIV or PIV-I card is provided, it shall be used in conjunction with a compliant card reader and middleware for logical system access. The Contractor shall (1) Include FIPS 201-2 compliant, HSPD-12 card readers with the purchase of servers, desktops, and laptops; and (2) comply with [FAR 52.204-9](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/Far/04.htm#P600_75386), Personal Identity Verification of Contractor Personnel.

1. **Definitions**

 “Agency Access” means access to CMS facilities, sensitive information, information systems or other CMS resources.

“Applicant” is a Contractor employee for whom the Contractor submits an application for a CMS identification card.

“Contractor Employee” means prime Contractor and subcontractor employees who require agency access to perform work under a CMS contract.

“Official station”— As defined by Federal Travel Regulations, An area defined by the agency that includes the location where the employee regularly performs his or her duties or an invitational traveler’s home or regular place of business. The area may be a mileage radius around a particular point, a geographic boundary, or any other definite domain, provided no part of the area is more than 50 miles from where the employee regularly performs his or her duties or from an invitational traveler’s home or reg­ular place of business. If the employee’s work involves recur­ring travel or varies on a recurring basis, the location where the work activities of the employee’s position of record are based is considered the regular place of work.

“Federal Identification Card” (or “ID card”) means a federal government issued or accepted identification card such as a Personal Identity Verification (PIV) card, Personal Identity Verification-Interoperable (PIV-I) card, or a Local-Based Physical Access Card issued by CMS, or a Local-Based Physical Access Card issued by another Federal agency and approved by CMS.  “Issuing Office” means the CMS entity that issues identification cards to Contractor employees.

“Locally Based Physical Access Card” means an access Card that is graphically personalized for visual identification, that does not contain an embedded computer chip, and is only used for physical access.

“Local Security Servicing Organization” means the CMS entity that provides security services to the CMS organization sponsoring the contract, Division of Physical Security and Strategic Information (DPSSI).

“Logical Access” means the ability for the Contractor to interact with CMS information systems, databases, digital infrastructure, or data via access control procedures such as identification, authentication, and authorization.

“Personal Identity Verification (PIV) card,” as defined in FIPS PUB 201-2, is a physical artifact (e.g., identity card, “smart” card) issued to an individual that contains a PIV Card Application which stores identity credentials (e.g., photograph, cryptographic keys, digitized fingerprint representation) so that the claimed identity of the cardholder can be verified against the stored credentials by another person (human readable and verifiable) or an automated process (computer readable and verifiable).

“Personal Identity Verification-Interoperable (PIV-I) card” similar to a PIV card, is a physical artifact (e.g., identity card, “smart” card) issued to an individual that contains a PIV Card Application which stores identity credentials (e.g., photograph, cryptographic keys, digitized fingerprint representation) so that the claimed identity of the cardholder can be verified against the stored credentials by another person (human readable and verifiable) or an automated process (computer readable and verifiable).  PIV-I cards are issued by a non-federal government entity to non-federal government staff. PIV-I cards are issued in a manner that allows federal relying parties to trust the cards. The PIV-I cards uses the same standards of vetting and issuance developed by the U.S. government for its employees

1. **Screening of Contractor Employee**
2. **Contractor Screening of Applicants**
3. Contractor Responsibility:  The Contractor shall pre-screen individuals designated for employment under any CMS contract by verifying minimum suitability requirements to ensure that only qualified candidates are considered for contract employment.  At the discretion of the government, the government reserves the right to request and/or review Contractor employee vetting processes.  The federal minimum suitability requirements can be found below in section (c)(2)—Suitability Requirements, and are also contained in 5 CFR 731.202. The Contractor shall exercise due diligence in pre-screening all employees prior to submission to CMS for agency access.
4. Alien Status:  The Contractor shall monitor an alien’s (foreign nationals) continued authorization for employment in the United States.  If requested by the Agency, the Contractor shall provide documentation to the Contracting Officer (CO) or the Contracting Officer’s Representative (COR) that validates that the Employment Eligibility Verification (e-Verify) requirement has been met for each Contractor or sub-Contractor employee working on the contract in accordance with Federal Acquisition Regulation (FAR) 52.222-54 - Employment Eligibility Verification.

1. Residency Requirement: All CMS Contractor applicants shall have lived in the United States at least three (3) out of the last five (5) years prior to submitting an application for a Federal ID Card.  CMS will process background investigations for foreign nationals in accordance with Office of Personnel Management (OPM) guidance.   Contractor employees who worked for the U. S. Government as an employee overseas in a Federal or military capacity; and/or been a dependent of a U.S. Federal or military employee serving overseas, must be able to provide state-side reference coverage. State-side coverage information is required to make a suitability or security determination.  Examples of state-side coverage information include: the state-side address of the company headquarters where the applicant’s personnel file is located, the state-side address of the Professor in charge of the applicant’s “Study Abroad” program, the religious organization, charity, educational, or other non-profit organization records for the applicant’s overseas missions, and/or the state-side addresses of anyone who worked or studied with the applicant while overseas.
2. Selective Service Registration:  All males born after December 31, 1959, must meet the Federal Selective Service System requirements as established on [www.sss.gov](http://www.sss.gov/).
3. **Identification Card Application Process**

**ID Card Sponsor**:  The CMS Contracting Officer’s Representative (COR) will be the CMS ID card Sponsor and point of contact for the Contractor’s application for a CMS ID card.  The COR will review and approve/deny the  HHS ID Badge Request before the form is submitted to the CMS, Office of Support Services and Operations, (OSSO), Division of Personnel Security Services (DPS), for processing.  If approved, an applicant may be issued either a Personal Identity Verification (PIV) or PIV- I card that meets the standards of HSPD-12 or a Local-Based Physical Access Card.

**Contractor Application Required Submissions**:  All applicants shall submit an HHS ID Badge Request form for issuance of a Federal ID  Card.  Unless otherwise directed by the ID Card Sponsor or DPS, applicants are required to electronically submit the request form via CMS’ Enterprise User Administration (EUA) Electronic Front-end Interface (EFI) system, which is located at <https://eua.cms.gov/efi>. To assist users with the application process, a user’s guide is located at:<https://www.cms.gov/About-CMS/Contracting-With-CMS/ContractingGeneralInformation/Contracting-Policy-and-Resources.html.>

The EUA users guide link should be used to obtain the most current instructional guidance.

**PIV Training**: Contractors who need PIV or PIV-I card shall complete HHS PIV Applicant Training, which is found at [https://www.cms.gov/About-CMS/Contracting-With-CMS/ContractingGeneralInformation/Contracting-Policy-and-Resources.html.](https://www.cms.gov/About-CMS/Contracting-With-CMS/ContractingGeneralInformation/Contracting-Policy-and-Resources.html)   A copy of the completion certificate shall be included with the EFI application.

**CMS Applicant Evaluations**:  CMS will evaluate an applicant’s required access level.  Once the review is complete and accepted for further processing, the applicant will be contacted by DPS to submit the below information, as applicable.

1. **e-QIP**:  Contractor employees will be required to submit information into e-QIP, a web-based automated system that is designed to facilitate the processing of standard investigative forms used when conducting background investigations for Federal security, suitability, fitness and credentialing purposes.
2. **Fingerprints**:  Instructions for obtaining fingerprints will be provided by CMS, OSSO, DPS.
3. **OF 306**:  Contractor employees may be required to complete the Optional Form (OF) 306, Declaration for Federal Employment which can be found at  <https://www.opm.gov/forms/pdf_fill/of0306.PDF.>
4. **Access to Restricted Area(s)**: The CMS COR will initiate all Federal ID card holders’ physical access requests via Physical Access Control System (PACS) Central at [https://pam.cms.local](https://pam.cms.local/).

**Suitability Requirements:** CMS may decline to grant agency access to a Contractor employee including, but not limited to, any of the criteria cited below:

1. Misconduct or negligence in employment;
2. Criminal or dishonest conduct;
3. Material, intentional false statement, or deception or fraud in examination or appointment;
4. Refusal to furnish testimony as required by § 5.4 of 5 CFR 731.202;
5. Alcohol abuse, without evidence of substantial rehabilitation, of a nature and duration that suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of the applicant or appointee or others;
6. Illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation;
7. Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force; and
8. Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

**Badge Issuance:** Upon approval of the badging application process and prior to starting work on the contract, applicants whose official station is located within 50 miles from CMS’ central office or one of its regional offices will be contacted to appear in person, at least two times (estimated at one hour for each visit), and shall provide two (2) original forms of identity source documents in order to generate the badge/ID. The identity source documents shall come from the list of acceptable documents included in FIPS 201-2, located at <http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.201-2.pdf>. At least one (1) document shall be a valid State or Federal government-issued picture ID.  PIV-I mobile enrollment stations will be made available for applicants that have an official station more than 50 miles from CMS or any of its regional offices, and the employee will not need to travel to a CMS Office. The Contractor will be contacted by CMS for further instructions on the badging process in this scenario.

1. **CMS Position Designation Assessment**

CMS will assign a risk and sensitivity level designation analysis to the overall contract and/or to Contractor employee positions by category, group or individual.  The risk and sensitivity level designations will be the basis for determining the level and type of personnel security investigations required for Contractor employees. At a minimum, the FBI National Criminal History Check (fingerprint check) must be favorably adjudicated. Additionally, the OPM e-QIP and other required forms must be accepted by DPS before a CMS identification card will be issued.

1. **Post Badging Training Requirements:**

Contractor employees that receive an HHS ID Badge are expected to complete the following online trainings each year, according to the timeframes indicated below, and annually thereafter. The below list is not all inclusive and the COR may indicate training that must be taken in addition to the below:

1. **Security and Insider Threat Awareness and Training (30 days after receiving badge):** This course outlines the role of Contractors with regard to protecting information and ensuring the secure operation of CMS federally controlled information systems.  Estimated time to complete is one hour.
2. **Computer Based Training (CBT)** (within 3 days of approved EUA account): This training offers several modules to familiarize contractor employees with features of CMS’ webinar service. Estimated time to complete is one hour.
3. **Background Investigation and Adjudication**

Upon contract award and receipt of an HHS ID Badge Request, CMS will initiate the Agency Access procedures, to include a background investigation.

CMS may accept favorable background investigation adjudications from other Federal agencies when there has been no break in service.  A favorable adjudication does not preclude CMS from initiating a new investigation when deemed necessary.  Each CMS sponsored Contractor shall use the OPM e-QIP system to complete any required investigative forms.

The Contractor remains fully responsible for ensuring contract performance pending completion of background investigations of Contractor personnel.  Employees that do not require access to CMS federally controlled information systems,  facilities, or sensitive information in order to perform their duties may begin work on a contract immediately and need not submit an HHS ID Badge Request.

1. Failure to cooperate with OPM or Agency representatives during the background investigation process is considered grounds for removal from the contract.
2. DPS may provide written notification to the Contractor employee, with a copy to the COR, of all suitability/non-suitability decisions.  A CMS adjudicative decision (based on criminal history results or completed investigation results) is final, and is not subject to appeal.
3. Contractor personnel for whom DPS determines to be ineligible for ID issuance will be required to cease working on the contract immediately.
4. The Contractor shall immediately submit an adverse information report, in writing to the CO with a copy to the COR, of any adverse information regarding any of its employees that may impact their ability to perform under this contract.  Reports should be based on reliable and substantiated information, not on rumor or innuendo.  The report shall include, at a minimum, the Contractor employee's name and associated contract number along with the adverse information. The COR will forward the adverse information report to the DPS for review and/or action.
5. At the Agency’s discretion, Contractor personnel may be provided an opportunity to explain or refute unfavorable information before an adjudicative decision is rendered on whether or not to withdraw the Federal ID from the individual in question. Under the provision of the Privacy Act of 1974, Contractor personnel may request a copy of their own investigation by submitting a written request to the OPM Federal Investigative Services (FIS) Freedom of Information (FOI) office. The following OPM-FOI link is being provided to afford one the instructions for obtaining a copy of one’s file: <https://www.opm.gov/investigations/freedom-of-information-and-privacy-act-requests/>.
6. **Background Investigation Cost**

The government will bear the cost of background investigations that are performed at the direction of CMS’ personnel security representatives by the Federal government’s approved and designated background investigation service provider, the OPM.

At the Agency's discretion, if an investigated Contractor employee leaves the employment of the Contractor, or otherwise is no longer associated with the contract within one (1) year from the date the background investigation was completed, the Contractor may be required to reimburse CMS for the full cost of the investigation.  Depending upon the type of background investigation conducted and the cost incurred by CMS, the Contractor cost will be determined based upon the current OPM fiscal year billing rates, which can be found at <https://nbib.opm.gov/hr-security-personnel/investigations-billing-rates-resources/>.  The amount to be paid by the Contractor shall be due and payable when the CO submits a written letter notifying the Contractor as to the cost of the investigation. The Contractor shall pay the amount due within thirty (30) days of the date of the CO's letter by check, made payable to the "United States Treasury."  The Contractor shall provide a copy of the CO's letter as an attachment to the check and submit both to the Office of Financial Management at the following address:

Centers for Medicare & Medicaid Services

PO Box 7520

Baltimore, Maryland 21207

1. **Identification Card Custody and Control**

The Contractor is responsible for the custody and control of all forms of Federal identification issued by CMS to Contractor employees.  The Contractor shall immediately notify the COR when a Contractor employee no longer requires agency access due to transfer, completion of a project, retirement, removal from work on the contract, or termination of employment. Return all CMS Federal ID cards to:

The Centers for Medicare and Medicaid Services

Attn: DPS, Mailstop: SL-17-06

7500 Security Boulevard

Baltimore, Maryland 21244

The Contractor shall also ensure that Contractor employees comply with CMS requirements concerning the renewal, loss, theft, or damage of an ID card.

Failure to comply with the requirements for custody and control of CMS issued ID cards may result in a delay in withholding final payment or contract termination, based on the potential for serious harm caused by inappropriate access to CMS facilities, sensitive information, information systems or other CMS resources.

1. **Renewal**:  A Contractor employee’s CMS issued ID card is valid for a maximum of five (5) years and 9 months or until the contract expiration date (including option periods), whichever occurs first.   The renewal process should begin six weeks before the ID card expiration date by contacting the COR.  If an ID card is not renewed before it expires, the Contractor employee will be required to sign-in daily for facility access and may have limited access to information systems and other resources. Contractor ID card certificate(s) require yearly updates from the issuance date. The yearly updates should be coordinated between the contractor and the COR.

1. **Lost/Stolen**: Immediately upon detection that an ID card is lost or stolen, the Contractor or Contractor employee shall report a lost or stolen ID card to the COR and the local security servicing organization at SECURITY@cms.hhs.gov.  The Contractor shall also submit an Incident Report within 48 hours, to the COR, DPS at Badging@cms.hhs.gov, and the local security servicing organization.  The Incident Report shall describe the circumstances of the loss or theft.  If the loss or theft is reported by the Contractor to the local police, a copy of the police report shall be provided to the COR. The Contractor employee shall sign in daily for facility access and may have limited access to information systems and other resources until the replacement card is issued.

1. **Replacement**: An ID card will be replaced if it is damaged, contains incorrect data, or is lost or stolen for more than three (3) days, provided there is a continuing need for agency access to perform work under the contract.

In the event that the PIV card or certificate(s) are not renewed in a timely fashion, or the ID card requires replacement due to being lost, stolen, or damaged, the contractor employee will go through the “Badge Issuance” process again as described in above in section (c)(2). In any of these events, contact your COR to coordinate the appropriate next steps.

1. **Surrender ID Cards/Access Cards, Government Equipment**

CMS reserves the right to suspend or withdraw ID card access at any time for any reason.  Access will be restored upon the resolution of the issue(s).

Upon notification that routine access to CMS facilities, sensitive information, federally controlled information systems or other CMS resources is no longer required, the Contractor shall surrender the CMS issued ID card, access card, keys, computer equipment, and other government property to the CMS COR or directly to CMS at the address referenced above in section (f). DPS Contractor personnel who do not return their government issued property within 48 hours of the last day of authorized access to CMS, may be permanently barred from CMS systems and facilities and may be subject to fines and penalties, as authorized by applicable Federal or State laws.

1. **Mandatory Contractor Training (JUL 2021)**

All contractor employees who have access to (1) HHS Federal Information or a Federal information system or (2) personally identifiable information shall complete the CMS provided Records management training required by the Department of Health and Human Services (HHS) before performing any work under their contract.  Thereafter, the employees must complete annual Records Management training throughout the life of the contract.  The Contractor shall also ensure subcontractor compliance with this training requirement.

Link to the training can be found here: <https://www.cms.gov/About-CMS/Contracting-With-CMS/ContractingGeneralInformation/Contracting-Policy-and-Resources>

Contractor employees are expected to complete any new training requirements enacted by HHS, whereby access to the course material has been provided.  These courses are at no additional cost to the contract and the contractor is not required to provide documentation on such training unless specifically requested.  The Government does not anticipate a contractor will develop a system specifically designed to track and monitor such trainings, but will address the requirements under overall contract management and adherence to regulations as noted in the Contractor Performance Assessment Reporting System (CPARS).

1. **DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) CLAUSES INCORPORATED BY REFERENCE**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were provided in full text. Upon request, the Contracting Officer will provide the information in full text. The full text of a clause is also available electronically at <http://www.hhs.gov/policies/hhsar/>.

|  |  |  |
| --- | --- | --- |
| **NUMBER** | **TITLE** | **DATE** |
| 352.203-70 | Anti-Lobbying | DEC 2015 |
| 352-208-70 | Printing and Duplication | DEC 2015 |
| 352.211-3 | Paperwork Reduction Act | DEC 2015 |
| 352.222-70 | Contractor Cooperation in Equal Employment Opportunity Investigations | DEC 2015 |
| 352.224-70 | Privacy Act | DEC 2015 |
| 352.227-70 | Publications and Publicity  | DEC 2015 |
| 352.231-70 | Salary Rate Limitation | DEC 2015 |
| 352.233-71 | Litigation and Claims | DEC 2015 |
| 352.237-74 | Non-Discrimination In Service Delivery | DEC 2015 |

1. **HHSAR 352.224-71 CONFIDENTIAL INFORMATION (DEC 2015)**

(a) Confidential Information, as used in this clause, means information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization.

(b) Specific information or categories of information that the Government will furnish to the Contractor, or that the Contractor is expected to generate, which are confidential may be identified elsewhere in this contract. The Contracting Officer may modify this contract to identify Confidential Information from time to time during performance.

(c) Confidential Information or records shall not be disclosed by the Contractor until:

(1) Written advance notice of at least 45 days shall be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, to which an agency response may be appropriate to protect the public interest or that of the agency.

(2) For information provided by or on behalf of the government,

(i) The publication or dissemination of the following types of information are restricted under this contract: [INSERT RESTRICTED TYPES OF INFORMATION. If none, so state.]

(ii) The reason(s) for restricting the types of information identified in subparagraph (i) is/are: [STATE WHY THE PUBLIC OR GOVERNMENT INTEREST REQUIRES THE RESTRICTION OF EACH TYPE OF INFORMATION. ANY BASIS FOR NONDISCLOSURE WHICH WOULD BE VALID UNDER THE FREEDOM OF INFORMATION ACT IS SUFFICIENT UNDER THIS CLAUSE.]

(iii) Written advance notice of at least 45 days shall be provided to the Contracting Officer of the Contractor's intent to disseminate or publish information identified in subparagraph (2)(i). The contractor shall not disseminate or publish such information without the written consent of the Contracting Officer.

(d) Whenever the Contractor is uncertain with regard to the confidentiality of or a property interest in information under this contract, the Contractor should consult with the Contracting Officer prior to any release, disclosure, dissemination, or publication.

1. **HHSAR 352.237-75 KEY PERSONNEL (DEC 2015)**

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to the contractor voluntarily diverting any of the specified individuals to other programs or contracts the Contractor shall notify the Contracting Officer and shall submit a justification for the diversion or replacement and a request to replace the individual. The request must identify the proposed replacement and provide an explanation of how the replacement's skills, experience, and credentials meet or exceed the requirements of the contract (including, when applicable, Human Subjects Testing requirements). If the employee of the contractor is terminated for cause or separates from the contractor voluntarily with less than thirty days notice, the Contractor shall provide the maximum notice practicable under the circumstances. The Contractor shall not divert, replace, or announce any such change to key personnel without the written consent of the Contracting Officer. The contract will be modified to add or delete key personnel as necessary to reflect the agreement of the parties.

All proposed substitutions and additions must be submitted, in writing, to CMS at least thirty (30) days prior to the proposed substitution of key personnel. Each request shall provide a detailed explanation of the circumstances necessitating the proposed substitution, a complete resume and any other information required by CMS. All proposed substitutions must have qualifications equal to or greater than the person being replaced.

The following individuals are designated as key personnel:

|  |  |
| --- | --- |
| **Individual** | **Position** |
|  |  |
|  |  |
|  |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_is the Program Manager for this task order. This position is defined as Key Personnel in accordance with HHSAR 352.237-75. It is his/her responsibility to lead the organization and obtain the staff and resources necessary to conduct the task order.

The Program Manager shall be responsible for all staff employed under this task order.

The Program Manager shall be responsible for all work performed under this task order and shall be held accountable for the outcomes of the task order and the resolution of obstacles to achieving the outcomes necessary for success under this task order.

1. **HHSAR 352.239-73 ELECTRONIC INFORMATION AND TECHNOLOGY ACCESSIBILITY NOTICE (DEC 2015)**

(a) Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 and the Architectural and Transportation Barriers Compliance Board Electronic and Information (EIT) Accessibility Standards (36 CFR part 1194), require that when Federal agencies develop, procure, maintain, or use electronic and information technology, Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

(b) Accordingly, any offeror responding to this solicitation must comply with established HHS EIT accessibility standards. Information about Section 508 is available at [http://www.hhs.gov/web/508](https://www.hhs.gov/web/508). The complete text of the Section 508 Final Provisions can be accessed at <http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards>.

(c) The Section 508 accessibility standards applicable to this solicitation are stated in the clause at [352.239-74](https://www.hhs.gov/grants/contracts/contract-policies-regulations/hhsar/part-352-solicitation-provisions-contract-clauses/index.html#352.239-74), Electronic and Information Technology Accessibility.

In order to facilitate the Government’s determination whether proposed EIT supplies meet applicable Section 508 accessibility standards, offerors must submit an HHS Section 508 Product Assessment Template, in accordance with its completion instructions. The purpose of the template is to assist HHS acquisition and program officials in determining whether proposed EIT supplies conform to applicable Section 508 accessibility standards. The template allows offerors or developers to self-evaluate their supplies and document—in detail—whether they conform to a specific Section 508 accessibility standard, and any underway remediation efforts addressing conformance issues. Instructions for preparing the HHS Section 508 Evaluation Template are available under Section 508 policy on the HHS website [http://www.hhs.gov/web/508](https://www.hhs.gov/web/508).

In order to facilitate the Government’s determination whether proposed EIT services meet applicable Section 508 accessibility standards, offerors must provide enough information to assist the Government in determining that the EIT services conform to Section 508 accessibility standards, including any underway remediation efforts addressing conformance issues.

(d) Respondents to this solicitation must identify any exception to Section 508 requirements. If a offeror claims its supplies or services meet applicable Section 508 accessibility standards, and it is later determined by the Government, i.e., after award of a contract or order, that supplies or services delivered do not conform to the described accessibility standards, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its expense.

1. **HHSAR 352.239-74 ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY (DEC 2015)**

(a) Pursuant to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, all electronic and information technology (EIT) supplies and services developed, acquired, or maintained under this contract or order must comply with the “Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards” set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the “Access Board”) in 36 CFR part 1194. Information about Section 508 is available at [http://www.hhs.gov/web/508](https://www.hhs.gov/web/508)). The complete text of Section 508 Final Provisions can be accessed at <http://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards>.

(b) The Section 508 accessibility standards applicable to this contract or order are identified in the Statement of Work or Specification or Performance Work Statement. The contractor must provide any necessary updates to the submitted HHS Product Assessment Template(s) at the end of each contract or order exceeding the simplified acquisition threshold (see [FAR 2.101](http://www.ecfr.gov/cgi-bin/text-idx?node=pt48.1.2#se48.1.2_1101)) when the contract or order duration is one year or less. If it is determined by the Government that EIT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(c) The Section 508 accessibility standards applicable to this contract are:

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 (d) In the event of a modification(s) to this contract or order, which adds new EIT supplies or services or revises the type of, or specifications for, supplies or services, the Contracting Officer may require that the contractor submit a completed HHS Section 508 Product Assessment Template and any other additional information necessary to assist the Government in determining that the EIT supplies or services conform to Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found under Section 508 policy on the HHS website: [http://www.hhs.gov/web/508](https://www.hhs.gov/web/508)). If it is determined by the Government that EIT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(e) If this is an Indefinite Delivery contract, a Blanket Purchase Agreement or a Basic Ordering Agreement, the task/delivery order requests that include EIT supplies or services will define the specifications and accessibility standards for the order. In those cases, the Contractor may be required to provide a completed HHS Section 508 Product Assessment Template and any other additional information necessary to assist the Government in determining that the EIT supplies or services conform to Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found at [http://www.hhs.gov/web/508](https://www.hhs.gov/web/508). If it is determined by the Government that EIT supplies and services provided by the Contractor do not conform to the described accessibility standards in the provided documentation, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

1. **FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JUN 2020)**

 (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at [41 U.S.C. 4712](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Federal Acquisition Regulation (FAR) [3.908](https://www.acquisition.gov/far/3.908#FAR_3_908).

      (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), as described in section FAR [3.908](https://www.acquisition.gov/far/3.908#FAR_3_908).

      (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold, as defined in FAR [2.101](https://www.acquisition.gov/far/2.101#FAR_2_101) on the date of subcontract award.

1. **FAR 52.227-17 RIGHTS IN DATA—SPECIAL WORKS (DEC 2007)**

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

“Data” means recorded information, regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Unlimited rights”means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b)*Allocation of Rights.*

(1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c)*Copyright*—

(1)*Data first produced in the performance of this contract.*

(i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2)*Data not first produced in the performance of this contract.*The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d)*Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e)*Indemnity*. The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor’s consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

1. **FAR 52.244-2 SUBCONTRACTS (JUN 2020)**

 (a) Definitions. As used in this clause-

 "Approved purchasing system" means a Contractor’s purchasing system that has been reviewed and approved in accordance with part 44 of the Federal Acquisition Regulation (FAR).

 "Consent to subcontract" means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

 Subcontract means any contract, as defined in FAR subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

 (b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

 (c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that-

 (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

 (2) Is fixed-price and exceeds-

 (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract; or

 (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract.

 (d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

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 (e) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

 (i) A description of the supplies or services to be subcontracted.

 (ii) Identification of the type of subcontract to be used.

 (iii) Identification of the proposed subcontractor.

 (iv) The proposed subcontract price.

 (v) The subcontractor’s current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

 (vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

 (vii) A negotiation memorandum reflecting-

 (A) The principal elements of the subcontract price negotiations;

 (B) The most significant considerations controlling establishment of initial or revised prices;

 (C) The reason certified cost or pricing data were or were not required;

 (D) The extent, if any, to which the Contractor did not rely on the subcontractor’s certified cost or pricing data in determining the price objective and in negotiating the final price;

 (E) The extent to which it was recognized in the negotiation that the subcontractor’s certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

 (F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and

 (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

 (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

 (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination-

 (1) Of the acceptability of any subcontract terms or conditions;

 (2) Of the allowability of any cost under this contract; or

 (3) To relieve the Contractor of any responsibility for performing this contract.

 (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

 (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

 (i) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR subpart 44.3.

 (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

1. **FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within **30 days** of contract expiration.

1. **FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this task order by written notice to the Contractor prior to the end date of the period of performance of this task order; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least **30 days** before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended task order shall be considered to include this option clause.

(c) The total duration of this task order, including the exercise of any options under this clause, shall not exceed **5 Years.**

1. **FAR 52.204-24, REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)**

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at [52.204-26](https://www.acquisition.gov/far/part-52#FAR_52_204_26), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at [52.212-3](https://www.acquisition.gov/far/part-52#FAR_52_212_3), Offeror Representations and Certifications-Commercial Items.

      (a) Definitions. As used in this provision—

      Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause [52.204-25](https://www.acquisition.gov/far/part-52#FAR_52_204_25), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

      (b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

                (i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

                (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

           (2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

                (i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

                (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

      (c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) ([https://www.sam.gov](https://www.sam.gov/)) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

      (d) Representation. The Offeror represents that—

           (1) It □ will, □ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

           (2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

          It □ does, □ does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

      (e) Disclosures.

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

                (i) For covered equipment—

                     (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

                     (B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

                     (C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

                (ii) For covered services—

                     (A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

                     (B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

           (2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

                (i) For covered equipment—

                     (A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

                     (B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

                     (C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

                (ii) For covered services—

                     (A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

                     (B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

1. **FAR 52.204-25- PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)**

      (a) Definitions. As used in this clause—

      Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

      Covered foreign country means The People’s Republic of China.

      Covered telecommunications equipment or services means–

           (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

           (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

           (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

           (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

      Critical technology means–

           (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

           (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

                (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

                (ii) For reasons relating to regional stability or surreptitious listening;

           (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

           (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

           (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

           (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

      Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

      Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

      Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

      Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

      (b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](https://www.acquisition.gov/far/part-4#FAR_4_2104).

           (2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](https://www.acquisition.gov/far/part-4#FAR_4_2104). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

      (c) Exceptions. This clause does not prohibit contractors from providing—

           (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

           (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

      (d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at [https://dibnet.dod.mil](https://dibnet.dod.mil/). For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at [https://dibnet.dod.mil](https://dibnet.dod.mil/).

           (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

                (i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

                (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

      (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

1. **FAR 52.223-18 Contractor Policy to Ban Text Messaging While Driving (JUN 2020)**

In accordance with FAR 52.223-18, the following clause is incorporate into this task order:

(a) Definitions. As used in this clause--

“Driving”—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

1. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.
2. **FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)**

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

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government;

(1) When no longer needed for contract performance.

(2) Upon completion of the Contractor employee’s employment.

(3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of clause, including this paragraph (d), in all subcontracts when the subcontractor’s employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

1. **FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (NOV 2021)**

(a) Definitions. As used in this clause–

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information ([44 U.S.C. 3502](http://uscode.house.gov/)).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

1. **FAR 52.212-5- CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL ITEMS (OCT 2022).**

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

           (1) [52.203-19](https://www.acquisition.gov/far/part-52#FAR_52_203_19), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

           (2) [52.204-23](https://www.acquisition.gov/far/part-52#FAR_52_204_23), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

           (3) [52.204-25](https://www.acquisition.gov/far/part-52#FAR_52_204_25), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

           (4) [52.209-10](https://www.acquisition.gov/far/part-52#FAR_52_209_10), Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

           (5) [52.233-3](https://www.acquisition.gov/far/part-52#FAR_52_233_3), Protest After Award (Aug 1996) ([31 U.S.C. 3553](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

           (6) [52.233-4](https://www.acquisition.gov/far/part-52#FAR_52_233_4), Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 ( [19 U.S.C. 3805 note](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3))).

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

     [Contracting Officer check as appropriate.]

            \_\_ (1) [52.203-6](https://www.acquisition.gov/far/part-52#FAR_52_203_6), Restrictions on Subcontractor Sales to the Government (June 2020), with Alternate I (Oct 1995) ([41 U.S.C. 4704](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [10 U.S.C. 2402](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (2) [52.203-13](https://www.acquisition.gov/far/part-52#FAR_52_203_13), Contractor Code of Business Ethics and Conduct (Jun 2020) ([41 U.S.C. 3509](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3))).

            \_\_ (3) [52.203-15](https://www.acquisition.gov/far/part-52#FAR_52_203_15), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

            \_\_ (4) [52.204-10](https://www.acquisition.gov/far/part-52#FAR_52_204_10), Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020) (Pub. L. 109-282) ( [31 U.S.C. 6101 note](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section6101&num=0&edition=prelim)).

            \_\_ (5) [Reserved].

            \_\_ (6) [52.204-14](https://www.acquisition.gov/far/part-52#FAR_52_204_14), Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

            \_\_ (7) [52.204-15](https://www.acquisition.gov/far/part-52#FAR_52_204_15), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

            \_\_ (8) [52.209-6](https://www.acquisition.gov/far/part-52#FAR_52_209_6), Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Jun 2020) ([31 U.S.C. 6101 note](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section6101&num=0&edition=prelim)).

            \_\_ (9) [52.209-9](https://www.acquisition.gov/far/part-52#FAR_52_209_9), Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) ([41 U.S.C. 2313](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title41-section2313&num=0&edition=prelim)).

            \_\_ (10) [Reserved].

          \_\_ (11)

(i) [52.219-3](https://www.acquisition.gov/far/part-52#FAR_52_219_3), Notice of HUBZone Set-Aside or Sole-Source Award (Mar 2020) ([15 U.S.C. 657a](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section637a&num=0&edition=prelim)).

                  \_\_ (ii) Alternate I (Mar 2020) of [52.219-3](https://www.acquisition.gov/far/part-52#FAR_52_219_3).

          \_\_ (12)

(i) [52.219-4](https://www.acquisition.gov/far/part-52#FAR_52_219_4), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Mar 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                  \_\_ (ii) Alternate I (Mar 2020) of [52.219-4](https://www.acquisition.gov/far/part-52#FAR_52_219_4).

            \_\_ (13) [Reserved]

          \_\_ (14)

(i) [52.219-6](https://www.acquisition.gov/far/part-52#FAR_52_219_6), Notice of Total Small Business Set-Aside (Mar 2020) ([15 U.S.C. 644](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                  \_\_ (ii) Alternate I (Mar 2020) of [52.219-6](https://www.acquisition.gov/far/part-52#FAR_52_219_6).

          \_\_ (15)

(i) [52.219-7](https://www.acquisition.gov/far/part-52#FAR_52_219_7), Notice of Partial Small Business Set-Aside (Mar 2020) ([15 U.S.C. 644](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                  \_\_ (ii) Alternate I (Mar 2020) of [52.219-7](https://www.acquisition.gov/far/part-52#FAR_52_219_7).

            \_\_ (16) [52.219-8](https://www.acquisition.gov/far/part-52#FAR_52_219_8), Utilization of Small Business Concerns (Oct 2018) ([15 U.S.C. 637(d)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and (3)).

          \_\_ (17)

(i) [52.219-9](https://www.acquisition.gov/far/part-52#FAR_52_219_9), Small Business Subcontracting Plan (Jun 2020) ([15 U.S.C. 637(d)(4)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                  \_\_ (ii) Alternate I (Nov 2016) of [52.219-9](https://www.acquisition.gov/far/part-52#FAR_52_219_9).

                  \_\_ (iii) Alternate II (Nov 2016) of [52.219-9](https://www.acquisition.gov/far/part-52#FAR_52_219_9).

                  \_\_ (iv) Alternate III (Jun 2020) of [52.219-9](https://www.acquisition.gov/far/part-52#FAR_52_219_9).

                  \_\_ (v) Alternate IV (Jun 2020) of [52.219-9](https://www.acquisition.gov/far/part-52#FAR_52_219_9)

          \_\_ (18)

(i) [52.219-13](https://www.acquisition.gov/far/part-52#FAR_52_219_13), Notice of Set-Aside of Orders (Mar 2020) ([15 U.S.C. 644(r)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (ii) Alternate I (Mar 2020) of [52.219-13](https://www.acquisition.gov/far/part-52#FAR_52_219_13).

            \_\_ (19) [52.219-14](https://www.acquisition.gov/far/part-52#FAR_52_219_14), Limitations on Subcontracting (Mar 2020) ([15 U.S.C. 637(a)(14)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (20) [52.219-16](https://www.acquisition.gov/far/part-52#FAR_52_219_16), Liquidated Damages-Subcontracting Plan (Jan 1999) ([15 U.S.C. 637(d)(4)(F)(i)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (21) [52.219-27](https://www.acquisition.gov/far/part-52#FAR_52_219_27), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Mar 2020) ([15 U.S.C. 657f](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

          \_\_ (22)

(i) [52.219-28](https://www.acquisition.gov/far/part-52#FAR_52_219_28), Post Award Small Business Program Rerepresentation (May 2020) ([15 U.S.C. 632(a)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (ii) Alternate I (MAR 2020) of [52.219-28](https://www.acquisition.gov/far/part-52#FAR_52_219_28).

            \_\_ (23) [52.219-29](https://www.acquisition.gov/far/part-52#FAR_52_219_29), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Mar 2020) ([15 U.S.C. 637(m)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (24) [52.219-30](https://www.acquisition.gov/far/part-52#FAR_52_219_30), Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Mar2020) ([15 U.S.C. 637(m)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (25) [52.219-32](https://www.acquisition.gov/far/part-52#FAR_52_219_32), Orders Issued Directly Under Small Business Reserves (Mar 2020) ([15 U.S.C. 644](https://www.govinfo.gov/content/pkg/USCODE-2018-title15/html/USCODE-2018-title15-chap14A-sec644.htm)(r)).

            \_\_ (26) [52.219-33](https://www.acquisition.gov/far/part-52#FAR_52_219_33), Nonmanufacturer Rule (Mar 2020) ([15U.S.C. 637](https://www.govinfo.gov/content/pkg/USCODE-2018-title15/html/USCODE-2018-title15-chap14A-sec637.htm)(a)(17)).

            \_\_ (27) [52.222-3](https://www.acquisition.gov/far/part-52#FAR_52_222_3), Convict Labor (Jun 2003) (E.O.11755).

            \_\_ (28) [52.222-19](https://www.acquisition.gov/far/part-52#FAR_52_222_19), Child Labor-Cooperation with Authorities and Remedies (Jan2020) (E.O.13126).

            \_\_ (29) [52.222-21](https://www.acquisition.gov/far/part-52#FAR_52_222_21), Prohibition of Segregated Facilities (Apr 2015).

          \_\_ (30)

(i) [52.222-26](https://www.acquisition.gov/far/part-52#FAR_52_222_26), Equal Opportunity (Sep 2016) (E.O.11246).

                  \_\_ (ii) Alternate I (Feb 1999) of [52.222-26](https://www.acquisition.gov/far/part-52#FAR_52_222_26).

          \_\_ (31)

(i) [52.222-35](https://www.acquisition.gov/far/part-52#FAR_52_222_35), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C. 4212](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section4212&num=0&edition=prelim)).

                  \_\_ (ii) Alternate I (Jul 2014) of [52.222-35](https://www.acquisition.gov/far/part-52#FAR_52_222_35).

          \_\_ (32)

(i) [52.222-36](https://www.acquisition.gov/far/part-52#FAR_52_222_36), Equal Opportunity for Workers with Disabilities (Jun 2020) ([29 U.S.C. 793](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title29-section793&num=0&edition=prelim)).

                  \_\_ (ii) Alternate I (Jul 2014) of [52.222-36](https://www.acquisition.gov/far/part-52#FAR_52_222_36).

            \_\_ (33) [52.222-37](https://www.acquisition.gov/far/part-52#FAR_52_222_37), Employment Reports on Veterans (Jun 2020) ([38 U.S.C. 4212](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section4212&num=0&edition=prelim)).

            \_\_ (34) [52.222-40](https://www.acquisition.gov/far/part-52#FAR_52_222_40), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

          \_\_ (35)

(i) [52.222-50](https://www.acquisition.gov/far/part-52#FAR_52_222_50), Combating Trafficking in Persons (Jan 2019) ([22 U.S.C. chapter 78](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and E.O. 13627).

                  \_\_ (ii) Alternate I (Mar 2015) of [52.222-50](https://www.acquisition.gov/far/part-52#FAR_52_222_50) ([22 U.S.C. chapter 78](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and E.O. 13627).

            \_\_ (36) [52.222-54](https://www.acquisition.gov/far/part-52#FAR_52_222_54), Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](https://www.acquisition.gov/far/part-22#FAR_22_1803).)

          \_\_ (37)

(i) [52.223-9](https://www.acquisition.gov/far/part-52#FAR_52_223_9), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ( [42 U.S.C. 6962(c)(3)(A)(ii)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

                  \_\_ (ii) Alternate I (May 2008) of [52.223-9](https://www.acquisition.gov/far/part-52#FAR_52_223_9) ([42 U.S.C. 6962(i)(2)(C)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

            \_\_ (38) [52.223-11](https://www.acquisition.gov/far/part-52#FAR_52_223_11), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

            \_\_ (39) [52.223-12](https://www.acquisition.gov/far/part-52#FAR_52_223_12), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

          \_\_ (40)

(i) [52.223-13](https://www.acquisition.gov/far/part-52#FAR_52_223_13), Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

                  \_\_ (ii) Alternate I (Oct 2015) of [52.223-13](https://www.acquisition.gov/far/part-52#FAR_52_223_13).

          \_\_ (41)

(i) [52.223-14](https://www.acquisition.gov/far/part-52#FAR_52_223_14), Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

                  \_\_ (ii) Alternate I (Jun2014) of [52.223-14](https://www.acquisition.gov/far/part-52#FAR_52_223_14).

            \_\_ (42) [52.223-15](https://www.acquisition.gov/far/part-52#FAR_52_223_15), Energy Efficiency in Energy-Consuming Products (May 2020) ([42 U.S.C. 8259b](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

          \_\_ (43)

(i) [52.223-16](https://www.acquisition.gov/far/part-52#FAR_52_223_16), Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

                  \_\_ (ii) Alternate I (Jun 2014) of [52.223-16](https://www.acquisition.gov/far/part-52#FAR_52_223_16).

            \_\_ (44) [52.223-18](https://www.acquisition.gov/far/part-52#FAR_52_223_18), Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020) (E.O. 13513).

            \_\_ (45) [52.223-20](https://www.acquisition.gov/far/part-52#FAR_52_223_20), Aerosols (Jun 2016) (E.O. 13693).

            \_\_ (46) [52.223-21](https://www.acquisition.gov/far/part-52#FAR_52_223_21), Foams (Jun2016) (E.O. 13693).

          \_\_ (47)

(i) [52.224-3](https://www.acquisition.gov/far/part-52#FAR_52_224_3) Privacy Training (Jan 2017) (5 U.S.C. 552 a).

                  \_\_ (ii) Alternate I (Jan 2017) of [52.224-3](https://www.acquisition.gov/far/part-52#FAR_52_224_3).

            \_\_ (48) [52.225-1](https://www.acquisition.gov/far/part-52#FAR_52_225_1), Buy American-Supplies (May 2014) ([41 U.S.C. chapter 83](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

          \_\_ (49)

(i) [52.225-3](https://www.acquisition.gov/far/part-52#FAR_52_225_3), Buy American-Free Trade Agreements-Israeli Trade Act (May 2014) ([41 U.S.C.chapter83](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), [19 U.S.C. 3301](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)note, [19 U.S.C. 2112](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)note, [19 U.S.C. 3805](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) note, [19 U.S.C. 4001](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

                  \_\_ (ii) Alternate I (May 2014) of [52.225-3](https://www.acquisition.gov/far/part-52#FAR_52_225_3).

                  \_\_ (iii) Alternate II (May 2014) of [52.225-3](https://www.acquisition.gov/far/part-52#FAR_52_225_3).

                  \_\_ (iv) Alternate III (May 2014) of [52.225-3](https://www.acquisition.gov/far/part-52#FAR_52_225_3).

            \_\_ (50) [52.225-5](https://www.acquisition.gov/far/part-52#FAR_52_225_5), Trade Agreements (Oct 2019) ([19 U.S.C. 2501](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title19-section2501&num=0&edition=prelim), et seq., [19 U.S.C. 3301](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title19-section3301&num=0&edition=prelim) note).

            \_\_ (51) [52.225-13](https://www.acquisition.gov/far/part-52#FAR_52_225_13), Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.’s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

            \_\_ (52) [52.225-26](https://www.acquisition.gov/far/part-52#FAR_52_225_26), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302Note)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3).

            \_\_ (53) [52.226-4](https://www.acquisition.gov/far/part-52#FAR_52_226_4), Notice of Disaster or Emergency Area Set-Aside (Nov2007) ([42 U.S.C. 5150](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (54) [52.226-5](https://www.acquisition.gov/far/part-52#FAR_52_226_5), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ([42 U.S.C. 5150](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (55) [52.229-12](https://www.acquisition.gov/far/part-52#FAR_52_229_12), Tax on Certain Foreign Procurements (Jun 2020).

            \_\_ (56) [52.232-29](https://www.acquisition.gov/far/part-52#FAR_52_232_29), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 4505](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), [10 U.S.C. 2307(f)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (57) [52.232-30](https://www.acquisition.gov/far/part-52#FAR_52_232_30), Installment Payments for Commercial Items (Jan2017) ([41 U.S.C. 4505](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), [10 U.S.C. 2307(f)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (58) [52.232-33](https://www.acquisition.gov/far/part-52#FAR_52_232_33), Payment by Electronic Funds Transfer-System for Award Management (Oct2018) ([31 U.S.C. 3332](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section3332&num=0&edition=prelim)).

            \_\_ (59) [52.232-34](https://www.acquisition.gov/far/part-52#FAR_52_232_34), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (60) [52.232-36](https://www.acquisition.gov/far/part-52#FAR_52_232_36), Payment by Third Party (May 2014) ([31 U.S.C. 3332](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (61) [52.239-1](https://www.acquisition.gov/far/part-52#FAR_52_239_1), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section552a&num=0&edition=prelim)).

            \_\_ (62) [52.242-5](https://www.acquisition.gov/far/part-52#FAR_52_242_5), Payments to Small Business Subcontractors (Jan 2017) ([15 U.S.C. 637(d)(13)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

          \_\_ (63)

(i) [52.247-64](https://www.acquisition.gov/far/part-52#FAR_52_247_64), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241(b)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [10 U.S.C. 2631](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                  \_\_ (ii) Alternate I (Apr 2003) of [52.247-64](https://www.acquisition.gov/far/part-52#FAR_52_247_64).

                  \_\_ (iii) Alternate II (Feb 2006) of [52.247-64](https://www.acquisition.gov/far/part-52#FAR_52_247_64).

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

     [Contracting Officer check as appropriate.]

            \_\_ (1) [52.222-41](https://www.acquisition.gov/far/part-52#FAR_52_222_41), Service Contract Labor Standards (Aug 2018) ([41 U.S.C. chapter67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (2) [52.222-42](https://www.acquisition.gov/far/part-52#FAR_52_222_42), Statement of Equivalent Rates for Federal Hires (May 2014) ([29 U.S.C. 206](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (3) [52.222-43](https://www.acquisition.gov/far/part-52#FAR_52_222_43), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) ([29 U.S.C. 206](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (4) [52.222-44](https://www.acquisition.gov/far/part-52#FAR_52_222_44), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ( [29U.S.C.206](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)and [41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (5) [52.222-51](https://www.acquisition.gov/far/part-52#FAR_52_222_51), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (6) [52.222-53](https://www.acquisition.gov/far/part-52#FAR_52_222_53), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

            \_\_ (7) [52.222-55](https://www.acquisition.gov/far/part-52#FAR_52_222_55), Minimum Wages Under Executive Order 13658 (Dec 2015).

            \_\_ (8) [52.222-62](https://www.acquisition.gov/far/part-52#FAR_52_222_62), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

            \_\_ (9) [52.226-6](https://www.acquisition.gov/far/part-52#FAR_52_226_6), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ([42 U.S.C. 1792](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

      (d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR [2.101](https://www.acquisition.gov/far/part-2#FAR_2_101), on the date of award of this contract, and does not contain the clause at [52.215-2](https://www.acquisition.gov/far/part-52#FAR_52_215_2), Audit and Records-Negotiation.

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

           (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart [4.7](https://www.acquisition.gov/far/part-4#FAR_Subpart_4_7), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

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

      (e)

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

                (i) [52.203-13](https://www.acquisition.gov/far/part-52#FAR_52_203_13), Contractor Code of Business Ethics and Conduct (Jun 2020) ([41 U.S.C. 3509](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (ii) [52.203-19](https://www.acquisition.gov/far/part-52#FAR_52_203_19), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

                (iii) [52.204-23](https://www.acquisition.gov/far/part-52#FAR_52_204_23), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

                (iv) [52.204-25](https://www.acquisition.gov/far/part-52#FAR_52_204_25), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

                (v) [52.219-8](https://www.acquisition.gov/far/part-52#FAR_52_219_8), Utilization of Small Business Concerns (Oct 2018) ([15 U.S.C. 637(d)(2)](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section637&num=0&edition=prelim) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](https://www.acquisition.gov/far/part-19#FAR_19_702)(a) on the date of subcontract award, the subcontractor must include [52.219-8](https://www.acquisition.gov/far/part-52#FAR_52_219_8) in lower tier subcontracts that offer subcontracting opportunities.

                (vi) [52.222-21](https://www.acquisition.gov/far/part-52#FAR_52_222_21), Prohibition of Segregated Facilities (Apr 2015).

                (vii) [52.222-26](https://www.acquisition.gov/far/part-52#FAR_52_222_26), Equal Opportunity (Sep 2015) (E.O.11246).

                (viii) [52.222-35](https://www.acquisition.gov/far/part-52#FAR_52_222_35), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C. 4212](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (ix) [52.222-36](https://www.acquisition.gov/far/part-52#FAR_52_222_36), Equal Opportunity for Workers with Disabilities (Jun 2020) ([29 U.S.C. 793](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (x) [52.222-37](https://www.acquisition.gov/far/part-52#FAR_52_222_37), Employment Reports on Veterans (Jun 2020) ([38 U.S.C. 4212](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (xi) [52.222-40](https://www.acquisition.gov/far/part-52#FAR_52_222_40), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](https://www.acquisition.gov/far/part-52#FAR_52_222_40).

                (xii) [52.222-41](https://www.acquisition.gov/far/part-52#FAR_52_222_41), Service Contract Labor Standards (Aug2018) ([41 U.S.C. chapter 67](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title41-chapter67-front&num=0&edition=prelim)).

                (xiii)

(A) [52.222-50](https://www.acquisition.gov/far/part-52#FAR_52_222_50), Combating Trafficking in Persons (Jan 2019) ([22 U.S.C. chapter 78](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and E.O 13627).

                     (B) Alternate I (Mar2015) of [52.222-50](https://www.acquisition.gov/far/part-52#FAR_52_222_50) ([22 U.S.C. chapter 78 and E.O. 13627](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (xiv) [52.222-51](https://www.acquisition.gov/far/part-52#FAR_52_222_51), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (xv) [52.222-53](https://www.acquisition.gov/far/part-52#FAR_52_222_53), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                (xvi) [52.222-54](https://www.acquisition.gov/far/part-52#FAR_52_222_54), Employment Eligibility Verification (Oct 2015) (E.O. 12989).

                (xvii) [52.222-55](https://www.acquisition.gov/far/part-52#FAR_52_222_55), Minimum Wages Under Executive Order 13658 (Dec 2015).

                (xviii) [52.222-62](https://www.acquisition.gov/far/part-52#FAR_52_222_62), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

                (xix)

(A) [52.224-3](https://www.acquisition.gov/far/part-52#FAR_52_224_3), Privacy Training (Jan 2017) ([5 U.S.C. 552a](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

                     (B) Alternate I (Jan 2017) of [52.224-3](https://www.acquisition.gov/far/part-52#FAR_52_224_3).

                (xx) [52.225-26](https://www.acquisition.gov/far/part-52#FAR_52_225_26), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3).

                (xxi) [52.226-6](https://www.acquisition.gov/far/part-52#FAR_52_226_6), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ([42 U.S.C. 1792](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

                (xxii) [52.247-64](https://www.acquisition.gov/far/part-52#FAR_52_247_64), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241(b)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [10 U.S.C. 2631](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

1. **FAR 52.244-6- Subcontracts for Commercial Items (JAN 2022)**

 (a) Definitions. As used in this clause—

 “Commercial item” and “commercially available off-the-shelf item” have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

 “Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

 (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

 (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

 (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation 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 Contracting Officer.

 (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

 (iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

 (iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

 (v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

 (vi) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

 (vii) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C.637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

 (viii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

 (ix) 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).

 (x) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C.4212(a));

 (xi) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul2014) (29 U.S.C.793).

 (xii) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C.4212)

 (xiii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

 (xiv) (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).

 (B) Alternate I (Mar2015) of 52.222-50(22 U.S.C. chapter 78 and E.O. 13627).

 (xv) 52.222-55, Minimum Wages under Executive Order 13658 (Dec2015), if flow down is required in accordance with paragraph (k) of FAR clause 52.222-55.

 (xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

 (xvii) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

 (B) Alternate I (Jan 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

 (xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

 (xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

 (xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb2006) (46 U.S.C. App.1241 and 10 U.S.C.2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

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

 (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

1. **FAR 52.219-6 Notice of Total Small Business Set-Aside (NOV 2020)**

(a) *Definition*. *Small business concern*, as used in this clause—

           (1) 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 size standards in this solicitation.

           (2) *Affiliates*, as used in paragraph (a)(1) of this clause, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

      (b) *Applicability*. This clause applies only to-

           (1) Contracts that have been totally set aside for small business concerns; and

           (2) Orders set aside for small business concerns under multiple-award contracts as described in [8.405-5](https://www.acquisition.gov/far/8.405-5#FAR_8_405_5) and [16.505](https://www.acquisition.gov/far/16.505#FAR_16_505)(b)(2)(i)(F).

      (c) General.

 (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

           (2) Any award resulting from this solicitation will be made to a small business concern.

1. **FAR 52.219-13 Notice of Set-Aside of Orders (MAR 2020)**

(a) The Contracting Officer may set aside orders for the small business concerns identified in [19.000](https://www.acquisition.gov/far/19.000#FAR_19_000)(a)(3).

      (b) The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in [19.000](https://www.acquisition.gov/far/19.000#FAR_19_000)(a)(3) and the applicable small business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in [19.000](https://www.acquisition.gov/far/19.000#FAR_19_000)(a)(3).

**34. FAR 52.219-14 Limitations on Subcontracting (OCT 2022)**

a) This clause does not apply to the unrestricted portion of a partial set-aside.

      (b) *Definition.* *Similarly situated entity*, as used in this clause, means a first-tier subcontractor, including an independent contractor, that—

           (1) Has the same small business program status as that which qualified the prime contractor for the award (*e.g.*, for a small business set-aside contract, any small business concern, without regard to its socioeconomic status); and

           (2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the prime contractor assigned to the subcontract.

      (c) *Applicability.* This clause applies only to—

           (1) Contracts that have been set aside for any of the small business concerns identified in [19.000](https://www.acquisition.gov/far/19.000#FAR_19_000)(a)(3);

           (2) Part or parts of a multiple-award contract that have been set aside for any of the small business concerns identified in [19.000](https://www.acquisition.gov/far/19.000#FAR_19_000)(a)(3);

           (3) Contracts that have been awarded on a sole-source basis in accordance with subparts [19.8](https://www.acquisition.gov/far/subpart-19.8#FAR_Subpart_19_8), [19.13](https://www.acquisition.gov/far/subpart-19.13#FAR_Subpart_19_13), [19.14](https://www.acquisition.gov/far/subpart-19.14#FAR_Subpart_19_14), and [19.15](https://www.acquisition.gov/far/subpart-19.15#FAR_Subpart_19_15);

           (4) Orders expected to exceed the simplified acquisition threshold and that are—

                (i) Set aside for small business concerns under multiple-award contracts, as described in [8.405-5](https://www.acquisition.gov/far/8.405-5#FAR_8_405_5) and [16.505](https://www.acquisition.gov/far/16.505#FAR_16_505)(b)(2)(i)(F); or

                (ii) Issued directly to small business concerns under multiple-award contracts as described in [19.504](https://www.acquisition.gov/far/19.504#FAR_19_504)(c)(1)(ii);

           (5) Orders, regardless of dollar value, that are—

                (i) Set aside in accordance with subparts [19.8](https://www.acquisition.gov/far/subpart-19.8#FAR_Subpart_19_8), [19.13](https://www.acquisition.gov/far/subpart-19.13#FAR_Subpart_19_13), [19.14](https://www.acquisition.gov/far/subpart-19.14#FAR_Subpart_19_14), or [19.15](https://www.acquisition.gov/far/subpart-19.15#FAR_Subpart_19_15) under multiple-award contracts, as described in [8.405-5](https://www.acquisition.gov/far/8.405-5#FAR_8_405_5) and [16.505](https://www.acquisition.gov/far/16.505#FAR_16_505)(b)(2)(i)(F); or

                (ii) Issued directly to concerns that qualify for the programs described in subparts [19.8](https://www.acquisition.gov/far/subpart-19.8#FAR_Subpart_19_8), [19.13](https://www.acquisition.gov/far/subpart-19.13#FAR_Subpart_19_13), [19.14](https://www.acquisition.gov/far/subpart-19.14#FAR_Subpart_19_14), or [19.15](https://www.acquisition.gov/far/subpart-19.15#FAR_Subpart_19_15) under multiple-award contracts, as described in [19.504](https://www.acquisition.gov/far/19.504#FAR_19_504)(c)(1)(ii); and

           (6) Contracts using the HUBZone price evaluation preference to award to a HUBZone small business concern unless the concern waived the evaluation preference.

      (d) *Independent contractors.* An independent contractor shall be considered a subcontractor.

      (e) *Limitations on subcontracting.* By submission of an offer and execution of a contract, the Contractor agrees that in performance of a contract assigned a North American Industry Classification System (NAICS) code for—

           (1) Services (except construction), it will not pay more than 50 percent of the amount paid by the Government for contract performance to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract;

           (2) Supplies (other than procurement from a nonmanufacturer of such supplies), it will not pay more than 50 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 50 percent subcontract amount that cannot be exceeded. When a contract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the contract;

           (3) General construction, it will not pay more than 85 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 85 percent subcontract amount that cannot be exceeded; or

           (4) Construction by special trade contractors, it will not pay more than 75 percent of the amount paid by the Government for contract performance, excluding the cost of materials, to subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the prime contractor's 75 percent subcontract amount that cannot be exceeded.

      (f) The Contractor shall comply with the limitations on subcontracting as follows:

           (1) For contracts, in accordance with paragraphs (c)(1), (2), (3) and (6) of this clause—

          [*Contracting Officer check as appropriate.*]

           *□* By the end of the base term of the contract and then by the end of each subsequent option period; or

           *□* By the end of the performance period for each order issued under the contract.

           (2) For orders, in accordance with paragraphs (c)(4) and (5) of this clause, by the end of the performance period for the order.

      (g) A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (e) of this clause will be performed by the aggregate of the joint venture participants.

           (1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.

           (2) In an 8(a)joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.