

# **FEDERAL ACQUISITION CIRCULAR**

November 14, 2008

Number 2005-29

Federal Acquisition Circular (FAC) 2005-29 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-29 is effective January 15, 2009.

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## FAC 2005-29 SUMMARY of ITEM

Federal Acquisition Circular 2005-29 amends the Federal Acquisition Regulation (FAR) as specified below:

### **Employment Eligibility Verification (FAR Case 2007-013)**

This final rule implements Executive Order 12989, as amended June 6, 2008, and the selection of the Secretary for Homeland Security of the E-Verify system as the electronic system to be used for certain contractors and subcontractors as the means of verifying that certain of their employees are eligible to work in the United States. This final rule inserts a clause into Federal contracts that are above the simplified acquisition threshold and have a performance period of at least 120 days, committing Government contractors to use the U.S. Citizenship and Immigration Services' E-Verify System to verify that all of the contractors' new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States.

Exemptions include contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications. The final rule requires prime contractors to include the clause in subcontracts over \$3,000 for services or for construction.

In exceptional circumstances, a head of the contracting activity, without power of redelegation, is authorized to waive the requirement to include the clause.

In response to public comments, the final rule significantly extends the timelines for registering, beginning to use the system for new and existing employees, and using the program to initiate verification of new hires.

Applicability to certain entities was limited in the following ways:

- Institutions of higher education need only verify employees assigned to a covered Federal contract.
- State and local governments and Federally Recognized Indian Tribes need only verify employees assigned to a covered Federal contract.
- Sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

In addition, the final rule exempts from verification requirements (a) employees who hold an active security clearance of confidential, secret, or top secret and (b) employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD) -12. Contractors concerned with costs associated with identifying and separating existing employees assigned to a Federal contract, for the purpose of E-Verify, are provided the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract.

**Replacement pages:** General Structure pp. iii and iv; 2.1-15 and 2.1-16; Part 22 TOC pp. 22-3 and 22-4; 22.1-1 and 22.1-2; 22.17-1 and 22.17-2; 22.18-1 and 22.18-2; Part 52 TOC pp. 52-3 and 52-4; 52.2-39 thru 52.3-42; 52.2-132.1 thru 52.2-132.4, (52.2-132.3 and 52.2-132.4 added). Matrix pp. 52.3-15 and 52.3-16.

## FAC 2005-29 FILING INSTRUCTIONS

**NOTE:** The FAR is now segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "2.1-15" is page fifteen of Subpart 2.1, and "22.18-1" is page one of Subpart 22.18. **Please do not file until their effective date of January 15, 2009.**

### Remove Pages

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Part 52 TOC  
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(2) In this context, the term does not mean that the source has the sole capability of performing the research.

“United States,” when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

- (1) For use in [Subpart 3.10](#), see the definition at [3.1001](#).
- (2) For use in [Subpart 22.8](#), see the definition at [22.801](#).
- (3) For use in [Subpart 22.10](#), see the definition at [22.1001](#).
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- (9) For use in [Subpart 47.4](#), see the definition at [47.401](#).

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (Section 36 of the Office of Federal Procurement Policy Act, [41 U.S.C. 401](#), *et seq.*). For use in the clause at [52.248-2](#), see the definition at [52.248-2\(b\)](#).

“Value engineering change proposal (VECP)”—

- (1) Means a proposal that—
  - (i) Requires a change to the instant contract to implement; and
  - (ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—
    - (A) In deliverable end item quantities only;
    - (B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or

(C) To the contract type only.

(2) For use in the clauses at—

- (i) [52.248-2](#), see the definition at [52.248-2\(b\)](#); and
- (ii) [52.248-3](#), see the definition at [52.248-3\(b\)](#).

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

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Virgin material” means—

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
- (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

“Voluntary consensus standards” means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies (*e.g.*, International Organization for Standardization (ISO) and ASTM-International). See OMB Circular A-119.

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

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

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

“Writing” or “written” (see “in writing”).

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**22.000 Scope of part.**

This part—

- (a) Deals with general policies regarding contractor labor relations as they pertain to the acquisition process;
- (b) Prescribes contracting policy and procedures for implementing pertinent labor laws; and
- (c) Prescribes contract clauses with respect to each pertinent labor law.

**22.001 Definitions.**

“Administrator” or “Administrator, Wage and Hour Division,” as used in this part, means the—

Administrator  
Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

or an authorized representative.

“e98” means the Department of Labor’s approved electronic application (<http://www.wdol.gov>), whereby a contracting officer submits pertinent information to the Department of Labor and requests a Service Contract Act wage determination directly from the Wage and Hour Division.

“Wage Determinations OnLine (WDOL)” means the Government Internet website for both Davis-Bacon Act and Service Contract Act wage determinations available at <http://www.wdol.gov>.

**Subpart 22.1—Basic Labor Policies****22.101 Labor relations.****22.101-1 General.**

(a) Agencies shall maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that may adversely affect the Government acquisition process and (2) that the Government obtains needed supplies and services without delay. All matters regarding labor relations shall be handled in accordance with agency procedures.

(b)(1) Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(2) For use of project labor agreements, see [36.202\(d\)](#).

(c) Agencies should, when practicable, exchange information concerning labor matters with other affected agencies to

ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies should take other actions concerning labor relations problems to the extent consistent with their acquisition responsibilities. For example, agencies should—

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute’s potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of supplies and services. This shall only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see [22.103-5\(a\)](#)).

**22.101-2 Contract pricing and administration.**

(a) Contractor labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see [31.205-6\(b\)](#).

(b) Labor disputes may cause work stoppages that delay the performance of Government contracts. Contracting officers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable delays. Standard contract clauses dealing with default, excusable delays, etc., do not relieve contractors or subcontractors from the responsibility for delays that are within the contractors’ or their subcontractors’ control. A delay caused by a strike that the contractor or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent contractor or subcontractor could have acted to end the strike by actions such as—

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court;

(2) Using other available Government procedures; and

(3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore may have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts. Certain costs may increase because of strikes; *e.g.*, guard services and attorney's fees. Other costs incurred during a strike may not fluctuate (*e.g.*, "fixed costs" such as rent and depreciation), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes shall be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If, during a labor dispute, the inspectors' safety is not endangered, the normal functions of inspection at the plant of a Government contractor shall be continued without regard to the existence of a labor dispute, strike, or picket line.

### 22.101-3 Reporting labor disputes.

The office administering the contract shall report, in accordance with agency procedures, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance. If a contract contains the clause at [52.222-1](#), Notice to the Government of Labor Disputes, the contractor also must report any actual or potential dispute that may delay contract performance.

### 22.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) Items shall be removed from contractors' facilities affected by work stoppages in accordance with agency procedures. Agency procedures should allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the contractor and the union representative involved their approval of the shipment of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or may become involved in the removal of items, the contract administration office shall ensure that the necessary coordination is accomplished.

## 22.102 Federal and State labor requirements.

### 22.102-1 Policy.

Agencies shall cooperate, and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as—

- (a) Safety;
- (b) Health and sanitation;
- (c) Maximum hours and minimum wages;
- (d) Equal employment opportunity;
- (e) Child and convict labor;
- (f) Age discrimination;
- (g) Disabled and Vietnam veteran employment;
- (h) Employment of the handicapped; and
- (i) Eligibility for employment under United States immigration laws.

### 22.102-2 Administration.

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the United States Employment Service (USES) and its affiliated local State Employment Service offices in meeting contractors' labor requirements. These requirements may be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the U.S. Virgin Islands. In addition to providing recruitment assistance to contractors, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. The Department of Labor's Wage and Hour Division is responsible for administration and enforcement of numerous wage and hour statutes including Davis-Bacon and Related Acts, McNamara-O'Hara Service Contract Act, Walsh-Healey Public Contracts Act, Copeland Act, and Contract Work Hours and Safety Standards Act. Contracting officers should contact the Wage and Hour Division's regional offices when required by the subparts relating to these statutes unless otherwise specified. Addresses for these offices may be found at 29 CFR 1, Appendix B.

## 22.103 Overtime.

### 22.103-1 Definition.

"Normal workweek," as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

- (1) The workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and

## Subpart 22.17—Combating Trafficking in Persons

### 22.1700 Scope of subpart.

This subpart prescribes policy for implementing [22 U.S.C. 7104](#).

### 22.1701 Applicability.

This subpart applies to all acquisitions.

### 22.1702 Definitions.

As used in this subpart—

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

### 22.1703 Policy.

The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Government contracts shall—

(a) Prohibit contractors, contractor employees, subcontractors, and subcontractor employees from—

(1) Engaging in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procuring commercial sex acts during the period of performance of the contract; and

(3) Using forced labor in the performance of the contract;

(b) Require contractors and subcontractors to notify employees of the prohibited activities described in paragraph (a) of this section and the actions that may be taken against them for violations; and

(c) Impose suitable remedies, including termination, on contractors that fail to comply with the requirements of paragraphs (a) and (b) of this section.

### 22.1704 Violations and remedies.

(a) *Violations.* The Government may impose the remedies set forth in paragraph (b) of this section if—

(1) The contractor, contractor employee, subcontractor, or subcontractor employee engages in severe forms of trafficking in persons during the period of performance of the contract;

(2) The contractor, contractor employee, subcontractor, or subcontractor employee procures a commercial sex act during the period of performance of the contract;

(3) The contractor, contractor employee, subcontractor, or subcontractor employee uses forced labor in the performance of the contract; or

(4) The contractor fails to comply with the requirements of the clause at [52.222-50](#), Combating Trafficking in Persons.

(b) *Remedies.* After determining in writing that adequate evidence exists to suspect any of the violations at paragraph (a) of this section, the contracting officer may pursue any of the remedies specified in paragraph (e) of the clause at [52.222-50](#), Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the United States Government.

### 22.1705 Contract clause.

(a) Insert the clause at [52.222-50](#), Combating Trafficking in Persons, in all solicitations and contracts.

(b) Use the basic clause with its Alternate I when the contract will be performed outside the United States (as defined at [25.003](#)) and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of “off-limits” local establishments) that apply to contractor employees at the contract place of performance.

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## Subpart 22.18—Employment Eligibility Verification

### 22.1800 Scope.

This subpart prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service’s employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.

### 22.1801 Definitions.

As used in this subpart—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“United States”, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

### 22.1802 Policy.

(a) Statutes and Executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the United States, but is not a substitute for any other employment eligibility verification requirements.

(b) Contracting officers shall include in solicitations and contracts, as prescribed at [22.1803](#), requirements that Federal contractors must—

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the United States, except that the contractor may choose to verify only new hires assigned to the contract if the contractor is—

(i) An institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#));

(ii) A State or local government or the government of a Federally recognized Indian tribe; or

(iii) A surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond;

(3) Use E-Verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements, as required by the clause at [52.222-54](#), in subcontracts for—

(i) Commercial or noncommercial services, except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; and

(ii) Construction.

(c) Contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of just those employees assigned to the contract. The contractor is not required to verify employment eligibility of—

(1) Employees who hold an active security clearance of confidential, secret, or top secret; or

(2) Employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12.

(d) In exceptional cases, the head of the contracting activity may waive the E-Verify requirement for a contract or subcontract or a class of contracts or subcontracts, either temporarily or for the period of performance. This waiver authority may not be delegated.

(e) DHS and the Social Security Administration (SSA) may terminate a contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor’s MOU, the terminating

agency must refer the contractor to a suspension or debarment official for possible suspension or debarment action. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at [52.222-54](#). If the contractor is suspended or debarred as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its suspension or debarment. If the suspension or debarment official determines not to suspend or debar the contractor, then the contractor must reenroll in E-Verify.

**22.1803 Contract clause.**

Insert the clause at [52.222-54](#), Employment Eligibility Verification, in all solicitations and contracts that exceed the simplified acquisition threshold, except those that—

- (a) Are only for work that will be performed outside the United States;
- (b) Are for a period of performance of less than 120 days; or
- (c) Are only for—
  - (1) Commercially available off-the-shelf items;
  - (2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of the definition of “commercial item” at [2.101](#));
  - (3) Items that would be COTS items if they were not bulk cargo; or
  - (4) Commercial services that are—
    - (i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);
    - (ii) Performed by the COTS provider; and
    - (iii) Are normally provided for that COTS item.

\* \* \* \* \*

52.216-12 Cost-Sharing Contract—No Fee.	52.219-13 [Reserved]
52.216-13 [Reserved]	52.219-14 Limitations on Subcontracting.
52.216-14 [Reserved]	52.219-15 [Reserved]
52.216-15 Predetermined Indirect Cost Rates.	52.219-16 Liquidated Damages—Subcontracting Plan.
52.216-16 Incentive Price Revision—Firm Target.	52.219-17 Section 8(a) Award.
52.216-17 Incentive Price Revision—Successive Targets.	52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
52.216-18 Ordering.	52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
52.216-19 Order Limitations.	52.219-20 Notice of Emerging Small Business Set-Aside.
52.216-20 Definite Quantity.	52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.
52.216-21 Requirements.	52.219-22 Small Disadvantaged Business Status.
52.216-22 Indefinite Quantity.	52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
52.216-23 Execution and Commencement of Work.	52.219-24 Small Disadvantaged Business Participation Program—Targets.
52.216-24 Limitation of Government Liability.	52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
52.216-25 Contract Definitization.	52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.
52.216-26 Payments of Allowable Costs Before Definitization.	52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
52.216-27 Single or Multiple Awards.	52.219-28 Post-Award Small Business Program Rerepresentation.
52.216-28 Multiple Awards for Advisory and Assistance Services.	52.220 [Reserved]
52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.	52.221 [Reserved]
52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.	52.222-1 Notice to the Government of Labor Disputes.
52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.	52.222-2 Payment for Overtime Premiums.
52.217-1 [Reserved]	52.222-3 Convict Labor.
52.217-2 Cancellation Under Multi-year Contracts.	52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
52.217-3 Evaluation Exclusive of Options.	52.222-5 Davis-Bacon Act—Secondary Site of the Work.
52.217-4 Evaluation of Options Exercised at Time of Contract Award.	52.222-6 Davis-Bacon Act.
52.217-5 Evaluation of Options.	52.222-7 Withholding of Funds.
52.217-6 Option for Increased Quantity.	52.222-8 Payrolls and Basic Records.
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	52.222-9 Apprentices and Trainees.
52.217-8 Option to Extend Services.	52.222-10 Compliance with Copeland Act Requirements.
52.217-9 Option to Extend the Term of the Contract.	52.222-11 Subcontracts (Labor Standards).
52.218 [Reserved]	52.222-12 Contract Termination—Debarment.
52.219-1 Small Business Program Representations.	52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
52.219-2 Equal Low Bids.	52.222-14 Disputes Concerning Labor Standards.
52.219-3 Notice of Total HUBZone Set-Aside.	52.222-15 Certification of Eligibility.
52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.	52.222-16 Approval of Wage Rates.
52.219-5 [Reserved]	52.222-17 [Reserved]
52.219-6 Notice of Total Small Business Set-Aside.	52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
52.219-7 Notice of Partial Small Business Set-Aside.	52.222-19 Child Labor—Cooperation with Authorities and Remedies.
52.219-8 Utilization of Small Business Concerns.	52.222-20 Walsh-Healey Public Contracts Act.
52.219-9 Small Business Subcontracting Plan.	
52.219-10 Incentive Subcontracting Program.	
52.219-11 Special 8(a) Contract Conditions.	
52.219-12 Special 8(a) Subcontract Conditions.	

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- 52.222-21 Prohibition of Segregated Facilities.
  - 52.222-22 Previous Contracts and Compliance Reports.
  - 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
  - 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
  - 52.222-25 Affirmative Action Compliance.
  - 52.222-26 Equal Opportunity.
  - 52.222-27 Affirmative Action Compliance Requirements for Construction.
  - 52.222-28 [Reserved]
  - 52.222-29 Notification of Visa Denial.
  - 52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).
  - 52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).
  - 52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).
  - 52.222-33 [Reserved]
  - 52.222-34 [Reserved]
  - 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
  - 52.222-36 Affirmative Action for Workers with Disabilities.
  - 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
  - 52.222-38 Compliance with Veterans’ Employment Reporting Requirements.
  - 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees.
  - 52.222-40 [Reserved]
  - 52.222-41 Service Contract Act of 1965.
  - 52.222-42 Statement of Equivalent Rates for Federal Hires.
  - 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
  - 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
  - 52.222-45 [Reserved]
  - 52.222-46 Evaluation of Compensation for Professional Employees.
  - 52.222-47 [Reserved]
  - 52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
  - 52.222-49 Service Contract Act—Place of Performance Unknown.
  - 52.222-50 Combating Trafficking in Persons.
  - 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.
  - 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
  - 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.
  - 52.222-54 Employment Eligibility Verification.
  - 52.223-1 Biobased Product Certification.
  - 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
  - 52.223-3 Hazardous Material Identification and Material Safety Data.
  - 52.223-4 Recovered Material Certification.
  - 52.223-5 Pollution Prevention and Right-to-Know Information.
  - 52.223-6 Drug-Free Workplace.
  - 52.223-7 Notice of Radioactive Materials.
  - 52.223-8 [Reserved]
  - 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.
  - 52.223-10 Waste Reduction Program.
  - 52.223-11 Ozone-Depleting Substances.
  - 52.223-12 Refrigeration Equipment and Air Conditioners.
  - 52.223-13 Certification of Toxic Chemical Release Reporting.
  - 52.223-14 Toxic Chemical Release Reporting.
  - 52.223-15 Energy Efficiency in Energy-Consuming Products.
  - 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.
  - 52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.
  - 52.224-1 Privacy Act Notification.
  - 52.224-2 Privacy Act.
  - 52.225-1 Buy American Act—Supplies.
  - 52.225-2 Buy American Act Certificate.
  - 52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.
  - 52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.
  - 52.225-5 Trade Agreements.
  - 52.225-6 Trade Agreements Certificate.
  - 52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.
  - 52.225-8 Duty-Free Entry.
  - 52.225-9 Buy American Act—Construction Materials.
  - 52.225-10 Notice of Buy American Act Requirement—Construction Materials.
  - 52.225-11 Buy American Act—Construction Materials under Trade Agreements.

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

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

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

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2009)

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

(2) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

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

[Contracting Officer check as appropriate.]

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

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

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

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

(5) [Reserved]

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

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

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

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

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

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

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

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

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

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

(10) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

(11) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

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

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

(13) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(14) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

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

(16) [52.219-28](#), Post Award Small Business Program Rerepresentation (JUNE 2007) ([15 U.S.C. 632\(a\)\(2\)](#)).

(17) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(18) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).

(19) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

(20) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(21) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

(22) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).

(23) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

(24) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(25)(i) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) (Applies to all contracts).

(ii) Alternate I (AUG 2007) of [52.222-50](#).

(26) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

— (27)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)).

— (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)).

— (28) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

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

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

— (30) [52.225-1](#), Buy American Act—Supplies (JUNE 2003) ([41 U.S.C. 10a-10d](#)).

— (31)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (AUG 2007) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).

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

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

— (32) [52.225-5](#), Trade Agreements (NOV 2007) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (33) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (34) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (35) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (36) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (37) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (38) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

— (39) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

— (40) [52.232-36](#), Payment by Third Party (MAY 1999) ([31 U.S.C. 3332](#)).

— (41) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

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

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

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

[Contracting Officer check as appropriate.]

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

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

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (NOV 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

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

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

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

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

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

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

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

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter I ([41 U.S.C. 251 note](#))).

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

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

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

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

(vi) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

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

(viii) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) ([22 U.S.C. 7104\(g\)](#)). Flow down required in accordance with paragraph (f) of FAR clause [52.222-50](#).

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

(x) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

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

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

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

(End of clause)

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

ated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

**52.213-1 Fast Payment Procedure.**

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

FAST PAYMENT PROCEDURE (MAY 2006)

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Include the following information on the invoice:

- (A) Shipment number.
- (B) Mode of shipment.
- (C) At line item level—

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

(2) Unit of measure;

(3) Ship-To Point;

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

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

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

- (i) Ship-To Point.
- (ii) Mark-For Point.

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

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

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

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers "FAST PAY." When outer shipping containers are not marked "FAST PAY," the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

### 52.213-2 Invoices.

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

INVOICES (APR 1984)

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

- (a) The starting and ending dates of the subscription delivery; and
- (b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

### 52.213-3 Notice to Supplier.

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

NOTICE TO SUPPLIER (APR 1984)

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

(End of clause)

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

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

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS  
(OTHER THAN COMMERCIAL ITEMS) (DEC 2008)

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

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

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

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

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

(iv) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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

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

(2) Listed below are additional clauses that apply:

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

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

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

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

available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR [22.1003-4\(d\)\(3\)](#) that the Service Contract Act—

(1) Will not apply to this offeror, then the Service Contract Act of 1965 clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at FAR [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, in this solicitation will not be included in any resultant contract awarded to this offer, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause of this solicitation at [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements, will not be included in any resultant contract to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible if the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

**52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.**

As prescribed in [22.1006\(e\)\(4\)](#), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE  
CONTRACT ACT TO CONTRACTS FOR CERTAIN  
SERVICES— REQUIREMENTS (NOV 2007)

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided

by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

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

(d) The Contractor uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

(e) (1) Any subcontract for these exempt services shall be awarded on a sole-source basis; or

(2) Except for services identified in FAR [22.1003-4\(d\)\(1\)\(iv\)](#), the subcontractor shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost in selecting the Contractor.

(f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Act shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(h) The Contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(End of clause)

#### 52.222-54 Employment Eligibility Verification.

As prescribed in [22.1803](#), Insert the following clause:

EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

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

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.* (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.* (A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working

in the United States who was hired after November 6, 1986, within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) *Is for—* (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of clause)

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PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<a href="#">52.222-39</a> Notification of Employee Rights Concerning Payment of Union Dues or Fees.	<a href="#">22.1605</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
<a href="#">52.222-41</a> Service Contract Act of 1965.	<a href="#">22.1006(a)</a>	C	Yes	I					A	A			A		A	A	A			A	A		
<a href="#">52.222-42</a> Statement of Equivalent Rates for Federal Hires.	<a href="#">22.1006(b)</a>	C	No	I					A	A			A		A	A	A			A	A		
<a href="#">52.222-43</a> Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	<a href="#">22.1006(c)(1)</a>	C	Yes	I					A				A		A	A	A			A	A		
<a href="#">52.222-44</a> Fair Labor Standards Act and Service Contract Act—Price Adjustment.	<a href="#">22.1006(c)(2)</a>	C	Yes	I					A				A		A	A	A			A	A		
<a href="#">52.222-46</a> Evaluation of Compensation for Professional Employees.	<a href="#">22.1103</a>	P	Yes	L					A	A													
<a href="#">52.222-48</a> Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.	<a href="#">22.1006(e)(1)</a>	C	Yes	I					A	A			A								A		
<a href="#">52.222-49</a> Service Contract Act—Place of Performance Unknown.	<a href="#">22.1006(f)</a>	C	Yes	I					A	A			A		A	A					A	A	
<a href="#">52.222-50</a> Combating Trafficking in Persons.	<a href="#">22.1705(a)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<a href="#">22.1705(b)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.222-51</a> Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	<a href="#">22.1006(e)(2)</a>	C	Yes	I					A	A			A								A		
<a href="#">52.222-52</a> Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.	<a href="#">22.1006(e)(3)</a>	P	Yes	I					A	A			A								A		
<a href="#">52.222-53</a> Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.	<a href="#">22.1006(e)(4)</a>	C	Yes	I					A	A			A								A		
<a href="#">52.222-54</a> Employment Eligibility Verification	<a href="#">22.1803</a>	C	Yes	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	A	
<a href="#">52.223-1</a> Biobased Product Certification.	<a href="#">23.406(a)</a>	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
<a href="#">52.223-2</a> Affirmative Procurement of Biobased Products Under Service and Construction Contracts.	<a href="#">23.406(b)</a>	C	Yes	I					A	A	A	A	A		A	A		A	A	A	A		
<a href="#">52.223-3</a> Hazardous Material Identification and Material Safety Data.	<a href="#">23.303</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<a href="#">23.303(b)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<a href="#">52.223-4</a> Recovered Material Certification.	<a href="#">23.406(c)</a>	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
<a href="#">52.223-5</a> Pollution Prevention and Right-to-Know Information.	<a href="#">23.1005</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<a href="#">23.1005(b)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate II	<a href="#">23.1005(c)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<a href="#">52.223-6</a> Drug-Free Workplace.	<a href="#">23.505</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<a href="#">52.223-7</a> Notice of Radioactive Materials.	<a href="#">23.602</a>	C	No	I	A	A	A	A	A	A	A	A			A		A	A		A			
<a href="#">52.223-9</a> Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	<a href="#">23.406(d)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate I	<a href="#">23.406(d)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
<a href="#">52.223-10</a> Waste Reduction Program.	<a href="#">23.706(a)</a>	C	Yes	I				A	A					A			A						
<a href="#">52.223-11</a> Ozone-Depleting Substances.	<a href="#">23.804(a)</a>	C	No	I	A	A													A		A		
<a href="#">52.223-12</a> Refrigeration Equipment and Air Conditioners.	<a href="#">23.804(b)</a>	C	Yes	I				A	A			A			A				A		A		
<a href="#">52.223-13</a> Certification of Toxic Chemical Release Reporting.	<a href="#">23.906(a)</a>	P	No	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
<a href="#">52.223-14</a> Toxic Chemical Release Reporting.	<a href="#">23.906(b)</a>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
<a href="#">52.223-15</a> Energy Efficiency in Energy-Consuming Products.	<a href="#">23.206</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
<a href="#">52.223-16</a> IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.	<a href="#">23.706(b)(1)</a>	C	Yes	I	A	A	A	A	A	A			A	A	A				A		A		A
Alternate I	<a href="#">23.706(b)(2)</a>	C	Yes	I	A	A	A	A	A			A	A	A					A		A		A
<a href="#">52.223-17</a> Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.	<a href="#">23.406(e)</a>	C	Yes	I				A	A	A	A	A		A	A		A	A	A	A			
<a href="#">52.224-1</a> Privacy Act Notification.	<a href="#">24.104(a)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
<a href="#">52.224-2</a> Privacy Act.	<a href="#">24.104(b)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
<a href="#">52.225-1</a> Buy American Act—Supplies.	<a href="#">25.1101(a)(1)</a>	C	Yes	I	A	A	A	A	A			A	A	A					A		A		A
<a href="#">52.225-2</a> Buy American Act Certificate.	<a href="#">25.1101(a)(2)</a>	P	No	K	A	A	A	A	A			A	A	A					A		A		
<a href="#">52.225-3</a> Buy American Act—Free Trade Agreements—Israeli Trade Act.	<a href="#">25.1101(b)(1)(i)</a>	C	Yes	I	A	A						A	A						A		A		A
Alternate I	<a href="#">25.1101(b)(1)(ii)</a>	C	Yes	I	A	A						A	A						A		A		A
Alternate II	<a href="#">25.1101(b)(1)(iii)</a>	C	Yes	I	A	A						A	A						A		A		A
<a href="#">52.225-4</a> Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.	<a href="#">25.1101(b)(2)(i)</a>	P	No	K	A	A						A	A						A		A		
Alternate I	<a href="#">25.1101(b)(2)(ii)</a>	P	No	K	A	A						A	A						A		A		
Alternate II	<a href="#">25.1101(b)(2)(iii)</a>	P	No	K	A	A						A	A						A		A		
<a href="#">52.225-5</a> Trade Agreements.	<a href="#">25.1101(c)(1)</a>	C	Yes	I	A	A													A		A		A
<a href="#">52.225-6</a> Trade Agreements Certificate.	<a href="#">25.1101(c)(2)</a>	P	No	K	A	A													A		A		
<a href="#">52.225-7</a> Waiver of Buy American Act for Civil Aircraft and Related Articles.	<a href="#">25.1101(d)</a>	P	Yes	L	A	A	A	A											A		A		A
<a href="#">52.225-8</a> Duty-Free Entry.	<a href="#">25.1101(e)</a>	C	Yes	I	A	A	A	A					A	A	A				A		A		A