

SOLICITATION NOTES

(Unless otherwise stated in the schedule, solicitation notes apply to all line items)

1. Offers must be submitted offer in Attachment 2 – Offeror Submission Package (OSP) of this solicitation.
2. **SELF RESTRICTIONS:** Minimum and maximum quantities must be consistent throughout all Attachment 2 sections, i.e., minimum and maximum quantities in Section A – Standard Offeror Sheet(s) must be consistent with minimum and maximum quantities in Section E – Offeror Conditions, and Section F – Sources of Supply. For example, under Section A – Standard Offeror Sheet(s), if you are offering a maximum amount of 150,000,000 USG of JAA by FOB Origin pipe from a refinery in San Pedro, CA, but limit your maximum quantity to 100,000,000 USG under Min/Max For Individual Shipping Location in Section E – Offeror Conditions, you are self-limiting a potential contract award by 50,000,000 USG (100,000,000 USG in Section E vice 150,000,000 USG in Section A). Please ensure all minimum and maximum quantities in your Origin and/or Destination offers are **consistent** with any conditions (Attachment 2 Section E) and/or production amount in Source of Supply (Section F).
3. **MEASUREMENT:** Maximum and minimum parcel sizes for each location are expressed in Barrels (BBLs). All other volumes are stated in U.S. Gallons (USG) unless indicated differently.
4. **SECTION C AND SECTION E QUALITY ASSURANCE PROVISIONS (QAPs):** For all Quality and Technical provisions please review the Solicitation and Attachments. QAPS are identified by reference in Section C and E and are attached in full text to this solicitation.
5. **FAR 52.212-2, Factor 1: Technical Acceptability:** The below items must be included in any initial offers in addition to all technical items outlined in FAR 52.212-2, Factor 1: Technical Acceptability. Offerors are reminded that the contracting officer has the right to set a competitive range in accordance with FAR 15.306(c).
 - a. Offered prices must be tied to base reference prices in the Attachment 2, in accordance with (IAW) B19.33..
 - b. Additive prices must be included if offer includes additives.
6. **PAYMENT TERMS:** This solicitation is NET 30 payment terms regardless of the SF1449 in the Attachment A.
7. The escalators in this solicitation are divided into two distinct geographical areas - the West Coast area and the Rocky Mountain area. The states included under the West Coast area are Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington. The states included under the Rocky Mountain area are Colorado, Idaho, Montana, New Mexico, Texas, Utah, and Wyoming.

The shipping point location of each offer determines the applicable geographical area. The offeror must tie each offer to an escalator either in the West Coast area or the Rocky Mountain area based on its shipping point location. For example, if the offer's shipping point is located in Los Angeles, California, the offeror's selected escalator must be listed under the West Coast area.

The escalators listed under the West Coast area cannot be tied to shipping points in the Rocky Mountain area and vice versa. In order to request an exception to these guidelines, offerors will need to follow the procedures in M72.10 and provide an explanation why the alternate escalator requested is a better indicator of market prices for its shipping point. The Contracting Officer will make the final decision as to accept or reject the request.
8. Evaluation PIPELINE volumes may be limited to basis of supply chain constraints such as, throughput capacity, provisions of governing tariff/shippers manual, asset availability, and solicited minimum/maximum parcel sizes. If the application of this provision results in a restriction to the quantity offered, then the Government will restrict the volume available for award.

Section B - SUPPLIES OR SERVICES AND PRICES OR COSTS

The schedule below indicates the supplies to be furnished:

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CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED: SPE602-23-R-0705	
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Section B

Quality Technical Provisions
TURBINE FUEL, AVIATION, JAA, 2.2B
9130-003592026
PR #: 7001873377

IAW BASIC QAP 52838 ENERGY-QAP-C16.08-1
REVISION NR C DTD 09/08/2022
PART PIECE NUMBER:
IAW REFERENCE QAP 52838 ENERGY-QAP-E21.01
REVISION NR B DTD 06/26/2015
PART PIECE NUMBER:
IAW REFERENCE QAP 52838 ENERGY-QAP-E40.01
REVISION NR A DTD 07/08/2014
PART PIECE NUMBER:
IAW REFERENCE QAP 52838 ENERGY-QAP-E1
REVISION NR B DTD 03/28/2022
PART PIECE NUMBER:
IAW REFERENCE QAP 52838 ENERGY-QAP-E22
REVISION NR D DTD 02/09/2022
PART PIECE NUMBER:
IAW REFERENCE QAP 52838 ENERGY-QAP-E35
REVISION NR A DTD 12/01/2011
PART PIECE NUMBER:
IAW REFERENCE QAP 52838 ENERGY-QAP-E12
REVISION NR A DTD 07/30/2015
PART PIECE NUMBER:

TURBINE FUEL, AVIATION, JAA, 2.2B

9130-003592026

PR #: 7001873377

JAA Requirement Totals are as follows:

Total Qty	Set Aside	8A Reservation Qty	Non Set Aside Qty	UoM
10,500,000	0	0	10,500,000	UG6

Total Estimated (JAA) Quantity to be Purchased: 10,500,000

EPA Region	Quantity	Escalator Id	Base Ref Price	Base Ref Date
WC	10,500,000	PLWCJET	0.000000	11/01/2022

WC

Item: T0001 **Throughput SPLC:** 890560000 DFSP WEST OAHU
Quantity: 10,500,000 UG6 **8A Quantity:** 0 **SA Quantity:** 0 **Unrestricted:** 10,500,000

NSN	Delivery Identification	State
9130-003592026 (JAA)	WESTOAHU - DFSP WEST OAHU	HI
TURBINE FUEL, AVIATION		

Region	Throughput SPLC	Requirement SPLC
WC	890560000	890560000

Delivery Address: 91-480 Mlalkole Street Kapolei HI

Service Code	Delivery DODAAC	Ordering Office DODAAC
DFSP	SE8PON	

Mode	Receipt %	Max Parcel	Min Parcel	FOB Restriction	FSII	SDA	CI
BULK:PIPE	100	250,000	25,000	O	N	N	N
BULK:TANKER	100	250,000		D	N	N	N

Delivery Hours: 24/7

Item: 0001
Quantity: 10,500,000.000 UG6 **8A Quantity:** 0 **SA Quantity:** 0 **Unrestricted:** 10,500,000

Section B

Period of Performance: 02/28/2023-05/14/2023

NSN
9130-003592026 (JAA)
TURBINE FUEL,AVIATION

Delivery Identification
PEARLHRBR - DFSP PEARL HARBOR

State
HI

Region
WC

Throughput SPLC
890560000

Requirement SPLC
890510000

Delivery Address: DFSP PEARL HABOR PEARL HARBOR HI 96860

Service Code
NAVY

Delivery DODAAC
SE8N0F

Ordering Office DODAAC

Mode
BULK:PIPE

Receipt %
100

Max Parcel
110,000

Min Parcel
25,000

FOB Restriction
O

FSII
N

SDA
N

CI
N

Delivery Notes: PIPELINE- MAY BE EVALUATED THROUGH DFSP OAHU OR DFSP WEST OAHU.

B19.33 ECONOMIC PRICE ADJUSTMENT – PUBLISHED MARKET PRICE – DLA ENERGY DOMESTIC BULK (DLA ENERGY JUN 2017)

- (a) Warranties. The Contractor warrants that—
 - (1) The base unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this contract text; and
 - (2) The prices to be invoiced shall be computed in accordance with the wording of this contract text.
- (b) Definitions. As used throughout this contract text, the term—
 - (1) Base unit price means the unit price set forth opposite the item in the Schedule.
 - (2) Market price means the price to be used in determining an economic price adjustment of the base unit price of an individual product for the market area and time period specified in this contract text. The market price is derived from quotes, assessments, or sales prices in the market place for one or several items or commodity groups as reported in a consistent manner in a publication, electronic data base, or other form, as determined by an independent trade association, governmental body, or other third party independent of the Contractor.
 - (i) Base market price means the price as shown in Column V of the table below, which is the market price from which economic price adjustments are calculated pursuant to this contract text.
 - (ii) Adjusting market price means the market price for deliveries during the most recent period, as defined in the table below.
 - (3) Date of delivery is defined as follows:
 - (i) For tanker or barge deliveries.
 - (A) Free on board (f.o.b.) origin. The date and time vessel commences loading.
 - (B) F.o.b. destination. The date and time vessel commences discharging.
 - (ii) For pipeline deliveries. The date and time product commences to move past the specified f.o.b. point.
 - (iii) For all other types of deliveries. The date product is received.
- (c) Adjustments.
 - (1) Subject to the wording of this contract text, the price payable shall be the base unit price in effect on the date of delivery increased or decreased by the same number of cents, or fraction thereof, that the adjusting market price applicable at date of delivery increases or decreases, per like unit of measure, from the base market price.
 - (2) Calculations. All calculations shall be rounded to six decimal places.
 - (3) Modifications. Any resultant price changes to the base market price and base unit price shall be executed by the Contracting Officer through a weekly price adjustment modification effective each Tuesday.
 - (4) Failure to deliver. Notwithstanding any other wording of this contract text, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the Contract Terms And Conditions - Commercial Items clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.
 - (5) Upward ceiling on economic price adjustment. The Contractor agrees that the total increase in any contract unit price, pursuant to these economic price adjustment contract texts shall not exceed 473% percent of the original base unit price in any applicable program year (whether a single year or multiyear program), except as provided hereafter.
 - (i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the wording of this contract text will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling which the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.
 - If an actual increase in the established market price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.
 - (6) Revision of market price indicator. In the event—
 - (i) Any applicable market price indicator is discontinued or its method of derivation is altered substantially; or
 - (ii) The Contracting Officer determines that the market price indicator consistently and substantially fails to reflect market conditions, -the parties shall mutually agree upon an appropriate and comparable substitute and the contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the Contract Terms And Conditions - Commercial Items contract text of this contract.
- (d) Conversion factors. If this contract text requires quantity conversions for economic price adjustment purposes, the conversion factors for applicable products, as specified in the DLA Energy conversion factor instruction, apply unless otherwise specified in the Schedule.
- (e) Examination of records. The Contractor agrees that the Contracting Officer or designated representative shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the wording of this contract text.
- (f) Final invoice. The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this contract text.
- (g) Table:

WEST COAST AREA: Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington

	<u>Product</u>	<u>Publication/Description</u>	<u>Detailed Description</u>	<u>Based Market Price at November 1, 2022</u>	<u>Formula ID</u>
1	JET FUEL	PLATTS: JET (SF+LA+SEA) AVG PIPE PWA	NOTE: Adjusting contract prices using this escalator will be firm for weekly periods and is defined as the average of Los Angeles, San Francisco, and Seattle applicable daily spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices are not published) shall be the adjusted contract price effective for the following Tuesday through Monday.	\$3.299660	PLWCJET
2	JET FUEL	ARGUS: JET (LA+SF) AVG PIPE PWA	NOTE: Adjusting contract prices using this escalator will be firm for weekly periods and is defined as the average of Los Angeles and San Francisco applicable daily spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices are not published) shall be the adjusted contract price effective for the following Tuesday through Monday. NOTE: Offers based on this escalator will be subject to a negative adjustment factor of -0.013134 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12- month averages of both market price indicators.	\$3.305660	ARWCJET
3	JET FUEL	OPIS: JET LAX LA DAILY	NOTE: Adjusting contract prices using this escalator will be based on the OPIS Jet LAX Los Angeles market price on the day of loading. The date of loading price is determined by taking the average for the day. If no price is published on the day of loading, the price will be based on the prior publication date. NOTE: Offers based on this escalator will be subject to a negative adjustment factor of +0.168283 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12-month averages of both market price indicators.	\$3.156100	OPLAJETSPO
4	JET FUEL	PLATTS: JET KERO LA PIPE PWA	NOTE: Adjusting contract prices using this escalator will be firm for weekly periods and is defined as the average of the applicable daily spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices are not published) shall be the adjusted contract price effective for the following Tuesday through Monday. NOTE: Offers based on this escalator will be subject to an adjustment factor of 0.000000 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12-month averages of both market price indicators.	\$3.299660	PLLAWKLY
5	JET FUEL	PLATTS: J KERO LA PIPE 3 DAY WRAP 1-1-1 WEST	NOTE: Adjusting contract prices using this escalator would be using a 3 day wrap (1-1-1). The pricing would be the average of the day prior to the lifting date, the day of, and the day after the lifting date. On days when prices are not published, the escalator price will remain the same as the last publication date on which prices were published. Example: shipment on a Saturday/Sunday will be Friday's price. When using this escalator please note that if awarded a contract, invoicing must be completed two (2) business days after the delivery date. NOTE: Offers based on this escalator will be subject to a negative adjustment factor of +0.124099 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12-month averages of both market price indicators.	\$3.205867	TMPLA3DAY

6	JET FUEL	PLATTS: JET KERO PIPE USGC DAILY FOR WEST	<p>NOTE: The reference price shall be determined as follows: 100% U.S. Gulf Coast Pipeline (Average of Low and High). Adjusting contract prices using this escalator will be based on the Platts Jet Kero 54 Pipeline market price on the day of loading. The date of loading price is determined by taking the average for the day. If no price is published on the day of loading, the price will be based on the prior publication date.</p> <p>NOTE: Offers based on the Platts Jet Kero 54 PL Daily will be subject to a negative adjustment factor of -0.075434 for evaluation purposes only. This evaluation factor represents the spread between the difference of the difference of the two reference prices and the 12- month averages of both market price indicators.</p>	\$3.338600	TMPJGCDAY
7	JET FUEL	PLATTS: JET KERO 54 PIPE USGC 5 DAY (2-1-2) WEST	<p>NOTE: Adjusting contract prices using this escalator would be using a 5 day wrap (2-1-2). The pricing would be the average of the 2 days prior to the lifting date, the day of, and 2 days after the lifting date.</p> <p>When using this escalator please note that if awarded a contract, invoicing must be completed three (3) business days after the delivery date. NOTE: Offers based on the Platts market price indicator will be subject to a negative adjustment factor of -0.164104 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12-month averages of both market price indicators.</p>	\$3.427180	TMPKERO54
8	JET FUEL	PLATTS: JET KERO PIPE USGC PWA FOR WEST	<p>Note: The reference price shall be determined as follows: 100% U.S. Gulf Coast Pipeline (Average of Low and High). Adjusting contract prices using this escalator will be firm for weekly periods and is defined as the average of the applicable daily spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices are not published) shall be the adjusted contract price effective for the following Tuesday through Monday.</p> <p>Note: Offers based on this escalator will be subject to a positive adjustment factor of -0.225224 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12-month averages of both market price indicators.</p>	\$3.452660	TMPJKPW
9	F76	PLATTS: ULSD PIPE USGC PWA	<p>NOTE: Adjusting contract prices using this escalator will be firm for weekly periods and is defined as the average of the applicable daily spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices are not published) shall be the adjusted contract price effective for the following Tuesday through Monday.</p> <p>NOTE: Offers based on this escalator will be subject to a positive adjustment factor of -0.126835 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12-month averages of both market price indicators.</p>	\$3.675160	PLGCULSD

10	JET FUEL	PLATTS: JET KERO SPORE CARGO PWA (MOPS) PJABF00	<p>NOTE: The reference price shall be determined as follows: Adjusting contract prices using this escalator will be firm for weekly periods and is defined as the average of the applicable daily spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices are not published) shall be the adjusted contract price effective for the following Tuesday through Monday.</p> <p>NOTE: Offers based on this escalator will be subject to a positive adjustment factor of +0.019324 for evaluation purposes only. This evaluation factor represents the spread between the difference of the two reference prices and the 12-month averages of both market price indicators.</p>	\$2.942976	TMPPLSSJET
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SECTION C – DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

QAP C1.02 ASSIST DATABASE OF SPECIFICATIONS (DEC 2016)

QAP C16.08-1 TURBINE FUEL, AVIATION (JET A) (DLA ENERGY APR 2020)

SECTION E – INSPECTION AND ACCEPTANCE

QAP E1 CONTRACTOR INSPECTION RESPONSIBILITIES (SEPT 2013)

QAP E21.01 POINT OF INSPECTION (JUN 2015)

QAP E22 LIST OF INSPECTION OFFICES FOR DLA ENERGY CONTRACTS (DLA ENERGY AUG 2020)

QAP E35 NONCONFORMING SUPPLIES AND SERVICES (DEC 2011)

QAP E40.01 MATERIAL INSPECTION AND RECEIVING REPORT (MIRR)/WIDE AREA WORKFLOW (WAWF) ENERGY RECEIVING REPORT (ERR) BULK FUEL/DIRECT DELIVERY AVIATION FUEL)(DLA ENERGY JUL 2014)

SECTION F: DELIVERIES OR PERFORMANCE

FAR 52.211-16 -- Variation in Quantity (Apr 1984)

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) of this clause.

(b) The permissible variation shall be limited to: 10 Percent increase

10 Percent decrease

This increase or decrease shall apply to each delivery order.

F1 DELIVERY CONDITIONS FOR TANK CARS, BOXCARS, TRUCKS, TRANSPORT TRUCKS, TRUCKS AND TRAILERS, TANK WAGONS, PIPELINE, AND LIGHTERS (DLA ENERGY JAN 2012)

(a) On items calling for delivery at Contractor's refinery, terminal, or bulk plant f.o.b. tank car, boxcar, truck, transport truck, truck and trailer, tank wagon, pipeline, or lighter--

(1) Supplies ordered hereunder shall be delivered, at Contractor's expense, into equipment specified in the Schedule.

(2) Unless otherwise specified in the Schedule, all deliveries shall be made upon the day specified in the order provided that the Contractor shall have received the order at least 48 hours prior to the day so specified, except for deliveries--

(i) By pipeline (other than into vessel, dredge, or barge for use as ships' bunkers) for which the Contractor shall be given 15 days' notice prior to the date so specified; and

(ii) Into vessel, dredge, or barge by any means of delivery including pipeline for use as ships' bunkers, for which deliveries the Contractor shall be given 24 hours' notice prior to the specific time delivery is to be made.

(3) All packaged or drummed material to be delivered f.o.b. boxcar, truck, or lighter shall be loaded (braced and blocked where necessary) by the Contractor as follows:

(i) **RAIL SHIPMENTS IN CONTINENTAL UNITED STATES AND ALASKA.**

(A) In accordance with the LOADING, BLOCKING, AND BRACING OF FREIGHT CARSHIPMENTS contract text.

(B) To the extent there is no conflict between the standards mentioned in paragraph (a) of the LOADING, BLOCKING, AND BRACING OF FREIGHT CAR SHIPMENTS contract text, when a freight advantage to the Government would result, the Contractor will load boxcars to maximum capacity, including multiple tiering.

(ii) **TRUCK SHIPMENTS IN THE UNITED STATES.** In accordance with ICC Regulations and best commercial practices.

(iii) **RAIL SHIPMENTS AND TRUCK SHIPMENTS - OVERSEAS, POSSESSIONS AND TERRITORIES.** In accordance with best commercial practices and local regulations, or as indicated in the Schedule.

(iv) **LIGHTER.** In accordance with best commercial practices.

(4) Except for supplies delivered f.o.b. boxcar, truck, or lighter, title to the supplies delivered, and risk of loss thereof, shall pass from the Contractor to the Government when the supplies pass into the receiving conveyance. Title to supplies delivered f.o.b. boxcar, truck, or lighter, and risk of loss thereof, shall pass from the Contractor to the Government at the time the car, truck, or lighter is released to, and accepted by, the carrier.

(b) On items calling for delivery f.o.b. destination by means of tank car, boxcar, truck, transport truck, truck and trailer, tank wagon, pipeline, or lighter--

(1) Supplies ordered hereunder shall be delivered, all transportation charges paid, to the destination and by means of the transportation equipment specified in the Schedule or, if no specific destination is indicated in the Schedule, to the destination specified in the order. Delivery shall be accomplished at Contractor's expense into Government storage or into the type of receiving equipment otherwise specified in the Schedule or in the order, except for--

(i) Delivery by tank car which shall be accomplished by spotting the car alongside the unloading manifold connection at the specified destination;

(ii) Delivery by boxcar which shall be accomplished at the specified destination as follows:

(A) If such activity has a railroad siding, by spotting the car alongside the unloading platform or elsewhere at such destination as may be designated by the receiving activity;

or

(B) If such activity does not have a railroad siding at the unloading platform of the railroad siding serving such activity, and if the freight tariff provides for free pickup and delivery service, delivery shall be made to the activity specified in the order;

(iii) Delivery by truck which shall be accomplished by spotting the truck at the unloading platform at the specified destination and by placing the drummed or packaged supplies at the tailgate of the truck; and

(iv) Delivery by lighter which shall be accomplished as indicated in the Schedule.

(2) Unless otherwise specified in the Schedule, all deliveries by tank car or boxcar shall be made within 24 hours from the time specified in the order, provided that such order shall have been received by the Contractor at least 120 hours prior to the time so specified; all other deliveries, except as hereinafter indicated, shall be made on the day specified in the delivery order and unless otherwise authorized by the receiving activity during normal working hours of such activity, provided that such order shall have been received by the Contractor at least 48 hours prior to the days so specified. Pipeline deliveries (except those into vessel, dredge, or barge) shall be made on the day specified in the delivery order, provided the order shall have been received by the Contractor at least 15 days prior to the day so specified. Delivery into vessels, dredges, or barges from a marine service station or by means of transport truck, truck and trailer, tank wagon, or pipeline shall be made at the specific time specified in the order,

provided that such order shall have been received by the Contractor at least 24 hours prior to the specific time such delivery is required to be made.

(3) The Contractor shall not be required to deliver by transport truck or truck and trailer a quantity less than a full load nor into more than one storage tank, with the following exceptions:

(i) An order placed under an item of this contract calling for delivery by transport truck of motor gasoline, fuel oil, diesel fuel, or kerosene, or, if this procurement is for Central America only, jet fuel, may require delivery of a quantity as low as 5,200 gallons whenever the activity is restricted either by a tank capacity or by a directive from receiving a larger quantity; and

(ii) Where the Schedule provides for multiple drop delivery, the Contractor may be required to deliver into more than one storage tank. Where truck and trailer is the method of delivery specified, the Contractor may, at its option, make delivery by transport truck. In the case of deliveries in Alaska, where truck and trailer or transport truck is the method of delivery specified, the Contractor may, at its option, make delivery by tank wagon.

(4) The Contractor shall not be required to deliver by tank wagon a quantity of less than 575 liters (or 150 gallons) but, at the Government's option, may be required to deliver into more than one storage tank.

(5) When delivery of fuel oil or lubricating oil is made by tank car, such car shall be equipped with steam coils, if specified in the order, to facilitate the unloading of such product.

(6) When delivery is made by tank wagon, such wagon shall be equipped with pump, meter, and a minimum of 100 feet (30 meters) of hose. Where delivery is made by transport truck or truck and trailer, such delivery equipment shall be equipped with a minimum of 15 feet of hose.

(7) When delivery is made by tank wagon, transport truck, or truck and trailer to a Government facility--

(i) The Contractor shall provide properly maintained delivery equipment and properly trained delivery personnel to reasonably assure that delivery can be made without damage to vegetation and asphalt pavement adjacent to storage facilities being filled. The Contractor's delivery personnel who have not exercised reasonable care and delivery equipment which is poorly maintained, may be refused entrance to the installation by the installation Commander.

(ii) The Contractor shall present delivery equipment and product in such condition at destination so as to permit complete off-loading within the prescribed free time.

(8) Unless otherwise provided in the Schedule, free time for unloading trucks, transport trucks, or trucks and trailers shall be unlimited.

(9) Except for supplies delivered by tank car, boxcar, truck, or lighter, title to supplies delivered, and risk of loss thereof, shall pass from the Contractor to the Government when the supplies pass into the receiving facilities. Title to supplies delivered by tank car or boxcar, and risk of loss thereof, shall pass from the Contractor to the Government at the time the car is released by the carrier for unloading. Title to supplies delivered by truck, and risk of loss thereof, shall pass from the Contractor to the Government when the drummed or packaged supplies are removed from the truck. Title to supplies delivered by lighter, and risk of loss thereof, shall pass from the Contractor to the Government at the time the receiving vessel's tackle is attached to the supplies to be unloaded.

F1.08 DELIVERY AND CONTRACT PERIODS FOR PIPELINE AND TANK CAR DELIVERIES (DOMESTIC BULK) (DLA ENERGY JAN 2018)

(a) The period of this contract during which the Ordering Officer may order, pursuant to the contract text DELIVERY- ORDER LIMITATIONS - SCOPE OF CONTRACT, is from date of award through September 30, 2023 plus the 30- day carryover.

(b) Notwithstanding (a) above, except at its option, the Contractor shall not be required to make delivery hereunder prior to March 15, 2023.

(c) In so far as practicable, the Government will attempt to lift in approximately equal monthly quantities. Except at its option, a supplier which offered product over the period from date of award until delivery shall not be required to--

(1) Make deliveries of any grade of product at a daily rate in excess of the contract quantity of such grade of product for delivery at or shipment from each designated refiner or bulk plant location divided by 365 days; or

(2) Accumulate any such product at any such location and to subsequently make deliveries in excess of 8.33% in any one month of the contract quantity of the applicable grade of product; provided, however, that where the maximum quantity available for individual deliveries as specified in the contract is greater than 8.33% percent per month, the supplier will accumulate any such product at any such location and subsequently make deliveries equal to the specified maximum quantity available for individual deliveries and, provided further, that the supplier will be required to make delivery in excess of 8.33% per month if the delivery is to be made f.o.b. tanker at origin and no other quantities have been ordered for delivery during the applicable month and the 30,000 barrels minimum, under (d) below, is greater than such 8.33% quantity.

F1.08-3 DELIVERY AND CONTRACT PERIODS FOR TANKER AND BARGE DELIVERIES (DOMESTIC BULK)(DLA ENERGY JAN 2012)

(a) The period of this contract during which the Ordering Officer may order pursuant to the DELIVERY-ORDER LIMITATIONS - SCOPE OF CONTRACT contract texts is from date of award through September 30, 2023 plus the 30-day carryover.

(b) Notwithstanding (a) above, except at its option, the Contractor shall not be required to make delivery hereunder prior to date of award.

(c) In so far as practicable, the Government will attempt to lift in approximately equal monthly quantities. Except at its option, a supplier which offered product over the period of date of award until date of final delivery shall not be required to accumulate any such

product at any such location and to subsequently make deliveries in excess of 8.33% in any one month of the contract quantity of the applicable grade of product; provided, however, that where the maximum quantity available for individual deliveries as specified in the contract is greater than 8.33% percent per month, the supplier will accumulate any such product at any such location and subsequently make deliveries equal to the specified maximum quantity available for individual deliveries and, provided further, that the supplier will be required to make delivery in excess of 8.33% per month if the delivery is to be made f.o.b. tanker at origin and no other quantities have been ordered for delivery during the applicable month and the 30,000 barrels minimum, under (d) below, is greater than such 8.33% quantity.

(d) Except at its option, the Contractor shall not be required to deliver f.o.b. tanker at origin in any one delivery a quantity of product(s) less than 30,000 barrels, except when the minimum quantity available for individual deliveries as specified in the contract is less than 30,000 barrels, or when on the last delivery, the quantity available pursuant to the DELIVERY-ORDER LIMITATIONS - SCOPE OF CONTRACT contract texts is less than 50,000 barrels.

F1.09 Determination of Quantity (DLA Energy AUG 2015)

Quantity. The quantity of supplies furnished under this contract shall be determined as follows:

Free on Board (f.o.b.) origin. All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries into tanker or barge. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into a tanker or barge, the quantity shall be determined (at the Contractor's option) on the basis of calibrated meter; or Shipping/shore tank measurement.

Deliveries into pipeline. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into a pipeline, the quantity shall be determined (at the Contractor's option) on the basis of calibrated meter; or shipping tank measurements.

Deliveries into rail tank car. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis, the quantity shall be determined (at the Contractor's option) on the basis of calibrated loading rack meter; or, using calibrated scales; or certified capacity table for the rail tank car.

Deliveries into tank truck, truck and trailer, or tank wagon. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into a tank truck, truck and trailer or tank wagon, the quantity shall be determined (at the Contractor's option) on the basis of calibrated loading rack meter; or weight, using calibrated scales; or certified capacity table for the conveyance or container.

Deliveries into intermodal container. On items requiring delivery at the Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis into an intermodal container, the quantity shall be determined (at the Contractor's option) on the basis of calibrated loading rack meter, loading either through top or bottom tank outlets (top loading requires loading gantry or "fall arrest" system), or certified capacity table for the container, or weight, using calibrated scales.

F.o.b. destination.

Deliveries by tanker or barge.

On items requiring delivery on an f.o.b. destination basis by tanker or barge, the invoice quantity shall be determined (at the Government's option) on the basis of calibrated meters on the receiving tank system; or receiving tank measurements. All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries by pipeline.

On items requiring delivery by pipeline on an f.o.b. pipeline junction or f.o.b. destination basis, the invoice quantity shall be determined (at the Government's option) on the basis of calibrated meters on the pipeline junction or the receiving tank system; or receiving tank measurements. F.o.b. pipeline junction is defined as the junction between a Contractor-owned or controlled pipeline and a Government-owned or controlled pipeline. All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries by rail tank car.

On items requiring delivery on an f.o.b. destination basis by rail tank car, the quantity of supplies furnished under this contract shall be determined (at the Government's option) on the basis of calibrated meter on the receiving tank system; or weight, using calibrated scales at the receiving location; or certified capacity table for the rail tank car; or receiving tank measurements. All invoice quantities shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius).

Deliveries by tank truck/truck and trailer/tank wagon/intermodal container.

On items requiring delivery on a f.o.b. destination basis by tank truck, truck and trailer, tank wagon or intermodal container, the quantity shall be determined—in the following order of preference:

Calibrated temperature compensating meters on the receiving system (as identified in the schedule). Calibrated temperature compensating meter on the delivery conveyance (as identified in the schedule). Weight, using calibrated scales at the receiving location (as identified in the schedule).
Calibrated meters on the receiving system, requiring manual volume correction (as identified in the schedule).

Loading ticket mechanically imprinted with the volume corrected (net) quantity. The ticket must be generated at the time of loading and be based on a calibrated loading rack meter or calibrated scales.

Calibrated meter on the delivery conveyance, requiring manual volume correction. Loading ticket, not volume corrected (requiring manual volume correction).

Invoice quantities for all residual fuels and lubricating oils and invoice quantities for other products that are in excess of 5,000 gallons (or 18,900 liters) shall be converted to net gallons at 60 degrees Fahrenheit (or liters at 15 degrees Celsius). Invoice quantities of non-residual fuels which are less than 5,000 gallons (or 18,900 liters) do not require correction to net gallons (or liters). For this purpose, residual fuels are any products with a viscosity equal to or greater than a regular (not light) number 4 fuel oil (ASTM D 396).

Water bottoms.

Every delivery must be free of all water bottoms prior to discharge; and The Contractor is responsible for their removal and disposal.

Measurement restrictions. All methods of measurement described in this contract text are subject to government safety and environmental restrictions, foreign or domestic. Such restrictions may prohibit, or render ineffective, a particular method in some cases.

Measurement standards. All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS). Outside the U.S., other technically equivalent national or international standards may be used. Certified capacity tables shall mean capacity tables prepared by an independent inspector or any independent surveyor to the aforementioned measurement and calibrations standards. In addition, the following specific standards will be used as applicable:

API MPMS Chapter 11.1, Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils (this chapter is an adjunct to ASTM D 1250, IP 200 and International Organization for Standardization (ISO) 91-1). Either the 2004 or 1980 version of the standard may be used. Either the printed tables (an adjunct to the 1980 version) or the computer subroutine version of the standard may be used. In case of disputes, the computer subroutine for the 2004 version of the standard will be the referee method.
For crude oils, JP4, and Jet B, use Volume I, Tables 5A and 6A; Volume VII, Tables 53A and 54A; or Volume IV, Tables 23A and 24A.

For lubricating oils, use Tables 5D and 6D, Tables 53D and 54D, or Tables 23D and 24D.

For all other fuels and fuel oils, use Volume II, Tables 5B and 6B; Volume VIII, Tables 53B and 54B; or Volume V, Tables 23B and 24B.

For chemicals/additives use Volume III, Table 6C (or Volume IX, Table 54C), or volume correct in accordance with the product specification.

Volume XII, Table 52, shall be used to convert cubic meters at 15 degrees Celsius to barrels at 60 degrees Fahrenheit. Convert liters at 15 degrees Celsius to cubic meters at 15 degrees Celsius by dividing by 1,000. Convert gallons at 60 degrees Fahrenheit to barrels at 60 degrees Fahrenheit by dividing by 42. Should foreign law restrict conversion by this method, the method required by law shall be used.

As an option to (b) (1) (v), liters may be converted to gallons using Table F1.09A (see below). If this option is used, it must be agreed upon by both parties and shall remain in effect for the duration of the contract. Should foreign law restrict conversion by this method, the method required by law shall be stated in the offer.

If the original measurement is by weight and quantity is required in U.S. gallons, then—

Volume XI, Table 8, shall be used to convert pounds to U.S. gallons at 60 degrees Fahrenheit. Volume XII, Table 58, shall be used to convert metric tons to U.S. gallons at 60 degrees Fahrenheit.

API MPMS, Chapter 4, Proving Systems. All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulation (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 12 months, whichever is more frequent. A meter calibration log/calibration certificates shall be maintained which as a minimum contains number/name of each meter; calibration frequency; date of the last calibration; due date for next calibration; name and signature of the person performing the calibration; traceability to master meter/prover used for calibration; and calibration report number.

Each meter shall be marked with the date of the last calibration and due date for the next calibration. All calibration meter records and logs/certificates shall be kept on file and made available upon request. All calibration records (including logs or certificates) shall be retained on file for a period of three years.

API MPMS Chapter 12, Calculation of Petroleum Quantities. All calculations of net quantities shall be made in accordance with this chapter. Outside the U.S., use of a tank shell correction factor is not required unless its use is a customary practice for custody transfer.

Table F1.09a Conversion Factor Table		
Density @ 15°C	Gallons at 60°F to Liters at 15°C; Multiply by	Liters at 15°C to Gallons at 60°F, Multiply by
0.723 – 0.768	3.78286	0.26435
0.769 – 0.779	3.78309	0.26433
0.780 – 0.798	3.78334	0.26432
0.799 – 0.859	3.78356	0.26430
0.860 – 0.964	3.78381	0.26428
0.965 – 1.074	3.78405	0.26427

Shipping documentation. When the Contractor's shipping document (such as a truck's metered ticket) is used to determine, or verify, the payment quantity under this contract, the following information shall be provided on that shipping document: gross and net quantity (gallons or liters, as required), observed and corrected API gravity/density, and the temperature (Fahrenheit or Celsius) at which the product was measured. This information shall be mechanically imprinted on the shipping document. Although this will apply primarily to the use of meters in various applications, it also applies to any other quantity determination method. The following exceptions apply:

Where Government documents are the sole basis for payment, such as Department of Defense (DD) Form 250/250-1s, the information is not required.

Where conveyances with temperature-compensating meters are used, the shipping document shall only be annotated with the corrected API gravity/density, the net quantity, and a statement that a temperature-compensating meter was used to determine net quantity.

Where conveyances with temperature compensating meters are not used, the shipping document shall be only be annotated with the API gravity (or density), gross quantity, and a statement that volume correction was not required.

Right to representative. For f.o.b. origin deliveries, the Government has the right to have a representative present to witness the measurement of quantity. For f.o.b. destination deliveries, the Contractor has the right to have a representative present to witness the delivery and measurement of quantity.

F1.11 DLA INTERNET BID BOARD SYSTEM (DIBBS) (DLA ENERGY) (APR 2014)

THIS CONTRACT TEXT ONLY APPLIES TO DLA FUNDED LINE ITEMS.

(a) Contractor Registration. Contractors must register in DIBBS to obtain a login account at <https://www.dibbs.bsm.dla.mil>. The login account will allow a contractor to register a primary and alternate email address for notifications. Contractors are strongly encouraged to establish a group email address for the primary email address for the contractor's authorized point of contacts. The registered email addresses will be the only email used by the government to make notifications.

(b) All contractors must have an active System for Award Management (SAM) account, <http://www.sam.gov> in order to register for DIBBS.

(c) The Contractor shall use DIBBS to receive orders. DLA Energy will not be using DIBBS receipt of quotes capability. All quotations, proposals, bids shall be submitted in accordance with the terms and conditions of the solicitation.

(d) Preparation and Transmission of Orders

(1) The Government may issue an order for a specific delivery or a series of deliveries (e.g., several deliveries during a week). The Government may also elect to issue an order covering a longer period (including monthly orders) and make periodic calls against these orders designating specific delivery dates, times, and quantities.

(2) Only a DLA Energy warranted Contracting Officer can issue an order, either orally or in writing, against a contract. An oral

order issued by the warranted Contracting Officer shall provide the required advance notice to the Contractor and the following information: **Interim order number**; contract number; item number; ceiling price; quantity; delivery location; and the required delivery and/ or service date.

- (i) For all product orders, the Contractor will receive an electronically signed written order via DIBBS, within 24 hours or one business day after the warranted Contracting Officer issues an oral order.
 - (ii) For all service orders, the Contractor will receive an electronically signed written order via DIBBS, within five business days after issuing the oral order.
 - (iii) Interim order number is subject to change once the electronically signed written order is received by the contractor. The order number on the written order will take precedence over the interim order number, if different.
 - (iv) Regardless of the unit price cited on the written order, the office designated to make payments on the written order will pay the applicable unit price in effect under the terms and conditions of the contract.
 - (v) Once the order has been issued, an email will be sent to the Contractor to provide notice that the order is available on the contract-specific web page. The order will also be submitted to the payment office.
- (3) Calls against previously issued orders must be confirmed in writing within 24 hours or one business day via email message. The email confirmation will reference the previously issued order number and item number and designate specific delivery location, dates, and quantity to be delivered against that order.
- (4) The Contractor's nonreceipt of a written or electronic confirmation of an oral order or oral call against a written or electronic order does not relieve the Contractor from its obligation to perform in accordance with the oral order or oral call against a written or electronic order. The Contractor should contact the DLA Energy Contracting Officer if problems are experienced with receipt of the electronic or written confirmation.

F14 SHIPMENT AND ROUTING (DLA ENERGY OCT 2020)

a) The Contractor shall make shipments of the supplies called for by this contract, or ordered hereunder, if this is an indefinite delivery contract, by the method specified in the Schedule, to the delivery point, in the quantity, and according to the delivery date specified in the Schedule or the order.

b) On items calling for delivery at Contractor's refinery, terminal, or bulk plant on an f.o.b. origin basis, transportation equipment will be furnished by the Government. Whenever any item of the Schedule specifies delivery by more than one method, selection of the method to be used shall be at the Government's option. Government-furnished transportation equipment that the Contractor finds unsatisfactory for loading shall be reported as follows:

1. **Tankers and Barges.** Report to the Quality Assurance Representative (QAR).
2. **Tank Cars.** Report to the QAR/Government Representative and Military Surface Deployment and Distribution Command, ATTN: Rail Fleet Manager, 1 Soldier Way, Scott AFB, IL 62225 or email usarmy.scott.sddc.mbx.dodx@mail.mil. Any shortage or overage of tank cars shall be similarly reported.
3. **Pipeline, Transport Trucks, Trucks and Trailers, and Tank Wagons.** Report to the QAR/Government Representative and to carrier's general office, or to home base or station, of such equipment.
4. In each case above, also report to the Defense Logistics Agency (DLA) Energy Regional Office having jurisdiction over the area in which shipment originates.

c) If the supplies are to be delivered f.o.b. pipeline, barge, tank car, truck, transport truck, truck and trailer, or tank wagon

1. For f.o.b. origin deliveries, unless otherwise directed by the DLA Energy Regional Office placing orders, the Contractor shall create shipments for transportation services using USBank's Syncada, with software and training to be provided by USBank. All Syncada users must complete the following annual training:

- i. Certifying Officer Legislation (COL)
- ii. Transportation Pay
- iii. Advanced Syncada Training

2. **Daily Load List.** For f.o.b. origin and destination truck deliveries, on each day truck(s) are loaded, the Contractor shall send by email a daily load list to the DLA Energy Regional Office having oversight of the contract and receiving locations.

3. For f.o.b. origin truck deliveries:
 - i. The Contractor shall upload all Bills of Lading (BOLs) at time of shipment transaction using USBank Syncada.
 - ii. The Contractor shall comply with transportation and routing instructions furnished by the DLA Energy Regional Office. Such instructions will include carrier names, routes, route order numbers, and other pertinent shipment information. The Contractor shall be responsible for the scheduling of commercial transport trucks to its plant in accordance with such routing instructions and consonant with the applicable order. All charges due to Contractor

caused delays at the loading facility, including improper equipment scheduling, will be the responsibility of the Contractor.

iii. **Motor Carrier Performance Reporting.** The Contractor shall maintain a daily written log of motor carrier performance to include carrier, destination, number of trucks ordered, number of trucks furnished, and deficiencies. On the last business day of each calendar month, the Contractor shall forward a copy of the daily written logs to the DLA Energy Americas office having oversight of the motor carrier contract.

4. On f.o.b. destination items involving multiple car or truck load shipments, the Contractor shall assign one shipment number for shipments of supplies made on the same day, to the same destination, against the same contract line item.

d) On all tank car shipments, whether delivery is made on an f.o.b. origin or f.o.b. destination basis, the Contractor shall send to the consignee at the time of shipment a prepaid telegraphic notice that shall indicate grade of product, date of shipment, car and seal numbers, bill of lading number, and net quantities.

e) When required by the contract, or requested by the Government, the Contractor shall furnish serially numbered seals and effectively seal all tank cars, transport trucks, trucks and trailers, and tankers and barges (where sea suction and overboard discharge valves are present), whether delivery is made on an f.o.b. origin or f.o.b. destination basis. The marking on the seal shall be indicated on all shipping documents.

f) 1. If Government-owned or leased tank cars are furnished, the Contractor will maintain records showing each day a car is received or forwarded, by car number, and will furnish this information to the DLA Energy Regional Office upon receipt.

2. Bottom outlet gaskets and manway cover gaskets, when required due to deterioration or loss, shall be furnished and applied to tank cars by the Contractor.

3. The Contractor shall (i) inspect empty Government-owned tank cars located on the Contractor's premises and (ii) ship tank cars located on the Contractor's premises to repair facilities as directed by the Government.

g) Placards, as required by 49 CFR 172.506 and 49 CFR 172-508, shall be furnished and affixed to all tank cars and tank trucks by the Contractor unless placards are already affixed.

(g) The Contractor shall inspect all shipping conveyances, with the exception of government-furnished tankers and barges, prior to loading to ensure that product loaded will not be lost or contaminated by the condition of the conveyance. (Authorization for the Contractor to participate in the inspection of Government-furnished tankers and barges rests with QAR. The QAR has the right to inspect any Government-furnished conveyance prior to loading and, in the event the Contractor and the QAR disagree on the suitability to load such a conveyance, the determination of the QAR shall govern.) Only qualified Contractor personnel may perform inspections. In the case of tank trucks, Contractor may not delegate inspection responsibility to the operator/driver. The tank truck operator/driver may be permitted to physically load the tank truck; however, the loading operation must be under the surveillance and direction of qualified Contractor personnel.

F15 BARGE AND/OR SHALLOW DRAFT TANKER DEMURRAGE AND LOADING CONDITIONS (DLA ENERGY JUN 2022)

On items calling for delivery f.o.b. barge and/or shallow draft tanker at origin--

(a) DELIVERY DATES.

(1) Unless otherwise specified in the Schedule, orders placed under items of the Schedule calling for delivery f.o.b. barge and/or shallow draft tanker at Contractor's refinery, terminal, or bulk plant will be furnished to the Contractor at least 15 days in advance of the date on which delivery is to be made, which date is hereafter referred to as the "scheduled delivery date." Each order will specify the quantity to be delivered, the scheduled delivery date, and the cargo number, and, if then available, the name of the barge and/or shallow draft tanker (herein referred to as "vessel") to be loaded.

(2) The scheduled delivery date may be revised by the Ordering Officer at any time and, unless the Contractor registers objections with the Ordering Officer within 72 hours of receipt of such revised scheduled delivery date, such revised date shall become the new agreed scheduled delivery date. At the time the Contractor registers any such objections, the Contractor must provide a date, subsequent to the date proposed by the Ordering Officer, which represents the earliest date the Contractor can provide a berth. The Ordering Officer must confirm or reject the alternate date provided by the Contractor within 72 hours of receipt of the Contractor's objection. If the Ordering Officer chooses to accept the alternate date provided in the Contractor's objection, such revised date shall become the new agreed scheduled delivery date. If the Ordering Officer chooses to reject the alternate date provided by the Contractor, the scheduled delivery date will return to the previously scheduled delivery date.

(3) All communications regarding the establishment and revision of the scheduled delivery date and objections thereto shall be set down in writing at such time or promptly confirmed in writing.

(b) EXPECTED TIME OF ARRIVAL.

(1) For Barge deliveries, the vessel designated to lift the cargo will notify the Contractor's load facility at the method provided by the Contractor in K28.01 NOTIFICATION OF VESSEL EXPECTED TIME OF ARRIVAL (ETA) of the vessel name and the expected hour of arrival at least 24 hours before the expected time of arrival. When vessels are scheduled to load at more than one

contract source within a port complex, the 24 hour notices will be provided by the vessels to all contract sources at the same time as the notice is provided to the first contract source and will stipulate the order of loading.

(2) For Shallow Draft Tanker deliveries, the vessel designated to lift the cargo will notify the Contractor's load facility by the method provided by the Contractor in K28.01 NOTIFICATION OF VESSEL EXPECTED TIME OF ARRIVAL (ETA) of the vessel name and the expected hour of arrival at least 72 hours before the expected time of arrival, and at additional intervals of 48 and 24 hours before expected arrival. When vessels are scheduled to load at more than one contract source within a port complex, the 72-48-24 hour notices will be provided by the vessels to all contract sources at the same time as the notice is provided to the first contract source and will stipulate the order of loading.

(c) **LAYTIME.** The Contractor shall provide as soon as possible, but within 3 hours after receipt of notice of readiness to load from the vessel designated to load the cargo, a reachable berth free of cost to the Government, where the vessel can be safely moored and remain afloat at all times, for loading of the ordered supplies. Laytime shall commence, berth or no berth, either at the expiration of 3 hours after notice of readiness, or immediately when the vessel moors alongside, with or without notice of readiness, whichever first occurs; PROVIDED, however, that--

(1) If the vessel is tendered for loading on a date earlier than the last scheduled delivery date as determined pursuant to paragraph (a) above, the Government scheduled vessel shall be loaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or at 0300 local time on the last agreed schedule delivery date, whichever first occurs.

(2) If the vessel is tendered for loading later than noon on the day following the last agreed scheduled delivery date, as determined pursuant to paragraph (a) above, the vessel shall be loaded as soon as possible in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to have the vessel loaded as soon as is reasonably possible under the circumstances prevailing at the time.

(3) Laytime shall continue 24 hours a day, 7 days a week, without interruption from its commencement until loading of the vessel is completed and the vessel has been released for sailing by the Government Quality Representative.

(d) **ALLOWED LAYTIME.**

(1) **BASIC ALLOWED LAYTIME.**

(i) For cargo movements under DLA Energy bulk petroleum contracts via barge, the Contractor shall be allowed 1 hour for each 2,000 barrels loaded.

(ii) For cargo movement under DLA Energy bulk petroleum contracts via shallow draft tanker, the contractor shall be allowed 1 hour for each 3,500 barrels loaded.

(2) **INCREASES TO BASIC LAYTIME.**

(i) If, after laytime commences, the condition of the vessel to be loaded does not permit loading, such basic allowed laytime shall be increased by the duration of such delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, such basic allowed laytime will be increased by the duration of such delay that occurred after laytime commenced.

(iii) If regulations of the owner, operator of the vessel, Customs Officials, or Port Authority prohibit loading at any time after laytime commenced, time so lost shall be added to the basic allowed laytime.

(iv) If for any reason the Contractor is delayed in loading the vessel or there is a delay in releasing the vessel for sailing because of action of the U.S. Government that arises out of causes beyond the control and without the fault or negligence of the Contractor, such basic allowed laytime shall be increased by the duration of such delay.

(v) If the vessel requests cargo tanks be cushioned or topped off during the loading process and the quantity of product cushioned or topped including the time spent cushioning/topping tanks is noted on the DD Form 250-1, Loading/Inspection Report, the basic allowed laytime shall be increased by the difference between the actual time taken to cushion/top tanks and the amount of time required to pump the same quantity of cushioned/topped product at the Contractor's actual loading rate exclusive of cushioning/topping time and cushioning/topping quantity.

(vi) Contractor will be allowed up to 4 hours of additional laytime following removal of cargo hoses until vessel is released by the inspector in order to accomplish tasks required under the CONTRACTOR INSPECTION RESPONSIBILITIES contract text.

(vii) There will be no increases made to the basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings.

(viii) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing basic allowed laytime for one half of the delay.

(e) For all hours of laytime that elapse in excess of allowed laytime for loading provided for by paragraph (d) above, demurrage shall be paid by the Contractor as follows:

(1) **TIME CHARTER VESSELS.** At the demurrage rate for the vessel loaded, computed to the nearest whole hour, as published by the U.S. Government, and in effect on the date loading of the vessel is completed.

(2) The demurrage rate set forth in the Carrier's Tender of Freight Services and Demurrage Invoice to the Government.

(3) **CONTRACT VESSELS.** At the hourly rate specified in the contract.

(f) Hoses for loading a vessel shall be furnished, connected, and disconnected by the Contractor; loading arm shall be connected and disconnected by the Contractor.

(g) Title to the supplies delivered and risk of loss thereof shall pass from the Contractor to the Government when the supplies pass the vessel's permanent hose connection.

F16.01 BARGE/SHALLOW DRAFT TANKER DEMURRAGE AND UNLOADING CONDITIONS (BULK) (DLA ENERGY JUNE 2022)

On items calling for delivery f.o.b. destination by means of barge or shallow draft tanker--

(a) The term **shallow draft tanker**, as used herein, shall include coastal tankers.

(b) **DELIVERY DATES AND DESTINATION.** The supplies ordered hereunder shall be delivered, all transportation charges paid, to the destination specified in the Schedule. Unless otherwise specified in the Schedule, orders placed under items of the Schedule calling for delivery f.o.b. destination barge or shallow draft tanker will be furnished to the Contractor at least 15 days in advance of the date on which delivery is to be made, hereinafter referred to as the "scheduled delivery date." Each order will specify the quantity to be delivered and the scheduled delivery date. The scheduled delivery date may be changed by the Contractor at any time if the Ordering Officer approves.

(c) **PROVISION OF BERTH.** For deliveries occurring on the date of the latest approved scheduled delivery date, the Government will provide, free of cost, a reachable safe berth for the tug and tow or self-propelled barge or shallow draft tanker to be afloat at all times at the unloading port within 3 hours of the conditions at (c)(1) and (c)(2) being met. For deliveries occurring on a date other than the latest approved scheduled delivery date, the Government will provide safe berth within 12 hours of the conditions at (c)(1) and (c)(2) being met.

(1) Issuance of Notice of Readiness (NOR) to unload by the Master or Mate of the vessel designated to discharge; and

(2) The ordered product has been found acceptable in accordance with QAP E1 CONTRACTOR INSPECTION RESPONSIBILITIES.

(d) **COMMENCEMENT OF LAYTIME.** Laytime shall commence at the sooner of either: (i) the expiration of the provision of berth period prescribed by (c) above (the 3 hours or the 12 hour period, as the case may be), berth or no berth; or (ii) subject to the conditions in (c)(2) having been met, upon the barge's or shallow draft barge's arrival in berth. Laytime shall continue 24 hours a day, 7 days a week, without interruption from its commencement, until unloading of the barge or shallow draft tanker is completed and the hoses have been disconnected.

(e) **ALLOWED LAYTIME**

(1) **BASIC ALLOWED LAYTIME.**

(i) For barges, unless otherwise provided in the Schedule, the Government shall be allowed and will complete unloading within laytime determined as follows: 1 hour for each 2,000 barrels of supplies to be unloaded, plus 1 1/2 hours.

(ii) For shallow draft tankers, unless otherwise provided in the Schedule, the Government shall be allowed and will complete unloading within laytime determined as follows: 1 hour for each 3,500 barrels of supplies to be unloaded, plus 1 1/2 hours.

(2) **INCREASES TO ALLOWED LAYTIME.**

(i) If the condition of the barge or shallow draft tanker to be unloaded does not permit unloading within the number of hours determined in accordance with (e)(1) above, such allowed laytime shall be increased by a number of hours sufficient to permit the unloading of the barge.

(ii) If the barge or shallow draft tanker is delayed in reaching its berth within 3 hours or 12 hours, as the case may be, from the time the conditions in (c)(1) and (c)(2) have been met, and the delay is caused by the fault of the barge or shallow draft tanker, such allowed laytime shall be increased by the duration of such delay.

(iii) If regulations of the owner or operator of the barge or shallow draft tanker prohibit unloading at any time, time so lost shall be added to the amount of such allowed laytime.

(iv) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing basic allowed laytime for one-half of the delay.

(f) **DEMURRAGE PAYABLE.** For all hours of laytime that elapse in excess of the allowed laytime for unloading provided for by (e) above, or as otherwise provided for in the Schedule, demurrage will be paid by the Government at the demurrage rate in the charter for the barge or shallow draft tanker unloading. Demurrage payable by the Government shall in no event exceed either: 1) the actual demurrage expense incurred by the Contractor under the charter as established by an invoice, and 2) the total amount paid to charter the vessel, absent demurrage costs. For purposes of computing demurrage payable by the Government, if the laytime allowed in the charter is a combined total for both loading and discharging, 1/2 thereof shall be allocated to the unloading operation, except when less than a full cargo is unloaded, where such allocation shall be determined on a pro-rata basis.

(g) In the event of breakdown of Contractor's equipment, which will prohibit unloading for 2 hours or more, the Contractor will be required to remove the equipment from the Government-provided berth, unless permission is granted by the Government to allow the equipment to remain on berth. When the Government grants permission for the Contractor equipment to remain on berth, the Contractor will be responsible to reimburse the Government for any cost incurred by the Government for furnishing personnel to remain with the barge or shallow draft tanker during repair; PROVIDED further, that if the Contractor removes the equipment from the Government provided berth, NOR to unload will be again required as provided in (c) above.

(h) Hoses for unloading a barge or shallow draft tanker will be furnished, connected, and disconnected by the Government.

(i) Title to the supplies delivered, and risk of loss thereof, shall pass from the Contractor to the Government when the supplies pass the permanent hose connections of the barge or shallow draft tanker unloading the supplies.

F52 TANKER/OCEAN-GOING BARGE DEMURRAGE AND LOADING CONDITIONS (DLA ENERGY JAN 2012)

On items calling for delivery f.o.b. tanker/ocean-going barge at origin

(a) **DELIVERY DATES.**

(1) Unless otherwise specified in the Schedule, orders placed under items of the Schedule calling for delivery f.o.b. tanker/ocean-going barge at Contractor's refinery, terminal, or bulk plant will be furnished to the Contractor at least 20 days in advance of the date on which delivery is to be made, which date is hereinafter referred to as the "scheduled delivery date." Each order will specify the quantity to be delivered, the scheduled delivery date, the cargo number, and, if then available, the name and size of the tanker/ocean-going

barge (herein referred to as "vessel") to be loaded.

(2) The scheduled delivery date may be revised by the Ordering Officer at any time and unless the Contractor registers objections with the Ordering Officer within 72 hours of receipt of such revised scheduled delivery date, such revised date shall become the new agreed scheduled delivery date. At the time the Contractor registers any such objections, the Contractor must provide a date, subsequent to the date proposed by the Ordering Officer, which represents the earliest date the Contractor can provide a berth. The Ordering Officer must confirm or reject the alternate date provided by the Contractor within 72 hours of receipt of the Contractor's objection. If the Ordering Officer chooses to accept the alternate date provided in the Contractor's objections, such revised date shall become the new agreed scheduled delivery date. If the Ordering Officer chooses to reject the alternate date provided by the Contractor, the scheduled delivery date will return to the previous scheduled delivery date.

(3) All communications regarding the establishment and revision of the scheduled delivery date and objections thereto shall be set down in writing at such time or promptly confirmed in writing.

(b) **EXPECTED TIME OF ARRIVAL.** The vessel designated to lift the cargo will notify the Contractor's load facility, at the telex/facsimile number provided by the Contractor, of the name and the expected hour of arrival of the vessel at least 72 hours before the expected time of arrival, and at additional intervals of 48 and 24 hours before expected arrival. When vessels are scheduled to load at more than one contract source within a port complex, the 72-48-24 hour notices will be provided by the vessels to all contract sources at the same time as the notice is provided to the first contract source and will stipulate the order of loading.

(c) **LAYTIME.** The Contractor shall provide as soon as possible, but within 6 hours after issue of notice of readiness to load from the vessel designated to load the cargo, a reachable berth, free of cost to the Government, for the loading of supplies ordered, where at least vessels with a maximum draft of _____ 37 _____ feet can be safely moored and remain afloat at all times. When vessels are scheduled to load at more than one contract source within a port complex, notice of readiness will be provided once by the vessel to all contract sources simultaneously. Laytime shall commence, berth or no berth, either at the expiration of 6 hours after notice of readiness is received or immediately when the vessel moors alongside with or without notice of readiness, whichever first occurs; PROVIDED, however, that--

(1) If the vessel is tendered for loading on a date earlier than the last agreed scheduled delivery date as determined pursuant to paragraph (a) above, the Government's vessel shall be loaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or at 6:00 a.m. local time on the last agreed scheduled delivery date, whichever first occurs.

(2) If the vessel is tendered for loading later than noon of the day following the last agreed scheduled delivery date, as determined pursuant to paragraph (a) above, the vessel shall be loaded as soon as possible in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available. If the vessel is not moored in its proper turn with other vessels, laytime will commence at 6:00 a.m. on the date the Government vessel's turn occurred, regardless of whether the cargo is available.

(3) For two or more contract sources within a port complex, laytime for the second or subsequent source begins when the vessel leaves the prior source. Laytime credit will be allowed for transit time between the prior and subsequent load source based on the actual transit time from the previous source to the subsequent source's loading berth or anchorage area if the berth is not available for the Government's vessel. In the event a berth is not available and the vessel is forced to anchorage, no additional laytime credit will be allowed when the vessel finally gets clearance to moor at the contractor's berth.

(4) Laytime shall continue 24 hours a day, 7 days a week, without interruption from its commencement until the entire loading of the vessel cargo is completed and the vessel has been released for sailing by the Government Quality Representative.

(d) **ALLOWED LAYTIME.**

(1) **BASIC ALLOWED LAYTIME.** For cargo movements under DLA Energy bulk petroleum contracts, the Contractor shall be allowed 36 hours of basic allowed laytime for loading a full vessel cargo. The 36 hours covers all operations for loading including cushioning and topping tanks. When partial vessel cargoes are to be loaded, a portion of the 36 hours basic laytime will be allocated to each loading port equal to the percentage of the total quantity loaded at each loading port or source.

(2) **INCREASES TO BASIC ALLOWED LAYTIME.**

(i) If after laytime commences, the condition of vessel to be loaded does not permit loading, such basic allowed laytime shall be increased by the duration of such delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, such basic allowed laytime will be increased by the duration of such delay which occurred after laytime commenced.

(iii) After laytime commences, when vessels are required to dock at anchorage due to vessel delays such as vessel inspection and inerting, laytime credit will be allowed for transit time from anchors away at anchorage until first line ashore berthing, not to exceed 2 hours.

(iv) If regulations of the owner or operator of the vessel prohibit loading at any time after laytime has commenced, time so lost shall be added to the basic allowed laytime.

(v) If for any reason the Contractor is delayed in loading the vessel or there is a delay in releasing the vessel for sailing because of action of the U.S. Government that arises out of causes beyond the control and without the fault or negligence of the Contractor, such basic allowed laytime shall be increased by the duration of such delay.

(vi) The Contractor will be allowed up to 4 hours of additional laytime following removal of cargo hoses until the vessel is released by the inspector in order to accomplish tasks required under the CONTRACTOR INSPECTION RESPONSIBILITIES contract provision.

(vii) There will be no increase made to the basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings.

(viii) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing basic allowed laytime for one-half of the delay.

(e) For all hours of laytime which elapse in excess of allowed laytime for loading provided for by paragraph (d) above, demurrage shall be paid by the Contractor as follows:

(1) **USS, USNS, OR TIME CHARTERED VESSELS.** At the demurrage rate for the vessel loaded, computed to the nearest whole hour, as published by the Military Sealift Command, and in effect on the date loading of the vessel is completed.

(2) **VOYAGE CHARTERED VESSELS.** At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the actual demurrage expense incurred by the Government under the charter;

(f) Hoses for loading a vessel shall be furnished, connected, and disconnected by the Contractor; loading arms shall be connected and disconnected by the Contractor.

(g) Title to the supplies delivered and risk of loss thereof shall pass from the Contractor to the Government when the supplies pass the vessel's permanent hose connections.

(h) The temperature of any fuel oil loaded shall be at least 10oF below the flash point of the oil and in no case higher than 150oF if the cargo tanks are uncoated, or 135oF if coated; **PROVIDED**, however, that in no event shall the difference between the temperature of the oil entering the vessel manifold and the recorded temperature of sea water at the vessel's condenser intake exceed 70oF; **PROVIDED** further, that the Master of the vessel may authorize loading the product at a temperature higher than specified above, so long as the temperature of the product remains at least 10oF below the flash point of the product.

F52.01 TANKER STANDARDS AND REQUIREMENTS (DLA ENERGY SEP 1995)

(a) All Government-furnished tankers used in the course of this contract will comply with the following:

(1) U.S.-flag tankers will hold and comply with the requirements of a current Certificate of Inspection (COI) from the U.S. Coast Guard and be in compliance with all requirements of Safety of Life at Sea (SOLAS) and International Convention for the Prevention of Pollution for Ships (MARPOL 73/78).

(2) In the event of a voyage charter, a non-U.S.-flag tanker will comply with SOLAS and MARPOL 73/78.

(3) Tankers on long term charter to the U.S. Government will be equipped with an Inert Gas System (IGS), which will be maintained in good working order. The U.S. Government will make best efforts to ensure voyage chartered tankers are equipped with IGS when required by the terminal or port authority and shall maintain and operate same in good working order.

(4) All tankers will carry on board and will be guided by the requirements of the latest edition of the Oil Companies International Marine Forum (OCIMF) and International Safety Guide for Oil Tankers and Terminals (ISGOTT).

(5) All tankers will be equipped with tank level measuring devices in each cargo tank.

(6) All tankers will be capable of vapor recovery, which includes closed loading, gauging, and sampling where required by port regulations.

(7) All tankers shall be in full compliance with all applicable international conventions and all applicable laws, regulations, and other requirements of the nation of registry and of the nation(s) and local jurisdictions to whose port(s) and/or places the tanker may be ordered.

(b) The Contractor may, at its own expense and in a manner so as not to delay a scheduled delivery, inspect tankers for compliance with these requirements. In the event the Contractor believes a tanker does not meet a requirement contained herein, the Contractor shall notify DLA Energy in writing with a copy to the tanker captain of the specific details of the alleged deficiency as soon as possible. The Contracting Officer will make a determination as to compliance with these requirements. This determination will be binding on the parties.

F54 TANKER UNLOADING CONDITIONS (DLA ENERGY AUG 2007)

On items calling for delivery f.o.b. destination by means of tanker--

(i) The supplies ordered hereunder shall be delivered, all transportation charges paid, to the destination specified in the Schedule. Unless otherwise specified in the Schedule, orders placed under items for delivery f.o.b. destination tanker would be furnished the Contractor at least 30 days in advance of the delivery schedule. The delivery schedule will be a three day window hereafter referred to as the lay window. Each order will specify a cargo number commencing with DC, the quantity to be delivered and the lay window. The lay window may be changed by the Contractor at any time if the Ordering Officer approves.

(ii) The Contractor will provide the following information with the vessel nomination prior to the Government accepting the vessel for use:

(1) The requirements of the Cargo Preference Act are applicable. If a U.S.-flag vessel is not available, the Contractor must request a waiver. The request must contain statements from at least two U.S.-flag carriers contacted (with names and telephone numbers). Copies of telephone notes, telegraphic and facsimile messages or letters will be sufficient for this purpose;

(2) Questionnaire 88 with full vessel particulars; and

(3) Vessel's prior two cargoes carried.

The Contractor will notify, or cause to be notified, the ordering activity of the vessel's status from time of nomination through completion of discharge operations.

Direct pre-arrival notifications to the receiving terminal shall be made in accordance with port, state and regulatory requirements at least 72 hours before the time of arrival.

(iii) Within six hours after receipt of notice of readiness (NOR) from the Captain or Master of the vessel, the Government will provide, free of cost, a reachable berth at the unloading port for the unloading of the supplies ordered where the tanker can be safely afloat at all times.

(iv) If the vessel tenders NOR, within the agreed lay window, laytime will commence for the Government NOR plus six hours or when the vessel moors alongside, whichever first occurs. Should a vessel tender NOR outside the agreed upon lay window, the vessel will wait in queue for its proper turn. The Government will make best efforts to minimize time waiting.

(v) The Government will be allowed a minimum of 1 hour of laytime for every 6,000 barrels of cargo for vessels of 30,000 dead weight tons or larger, plus an additional 4 hours for administrative and shore operational needs. Allowable laytime for the Government shall be increased for any delays caused by the vessel of the Contractor. Time waiting for cargo results, Port Authority delays, customs clearances, or any conditions beyond the Government's control shall not be counted.

- (vi) For all hours of laytime that elapse in excess of the allowed laytime for unloading provided for by (e) above, demurrage will be paid by the Government at the demurrage rate in the charter. The Contractor must provide proof of demurrage with the claim. The demurrage payable by the Government shall in no extent exceed the actual demurrage expense incurred by the Contractor.
- (vii) Hoses for unloading a tanker will be furnished, connected, and disconnected by the Government.
- (viii) Title to the supplies delivered, and risk of loss thereof, shall pass from the Contractor to the Government when the supplies pass the tanker's permanent hose connections.
- (ix) While unloading, the tanker shall be governed by all applicable regulations in force at unloading port, including those relating to fires on board ships.

F92.02 SCHEDULE OF REFINERY SHUTDOWNS FOR TURNAROUNDS (DOMESTIC AND OVERSEAS BULK) (DLA ENERGY JULY 2019) (ATTACHMENT 2)

F105.01 DEAD FREIGHT (DLA ENERGY JAN 2012)

(a) Any decrease in quantity not permissible under the VARIATION IN QUANTITY clause shall result in dead freight, chargeable to the Contractor and calculated as follows:

Total days of the cargo
TIMES
Vessel daily cost
DIVIDED BY
Vessel capacity stated in barrels
TIMES
Total barrels scheduled to load
MINUS
Total barrels loaded

EQUALS
Dead freight cost

(b) Explanation of terms used in (a) above follows:

- (1) "Total days of the cargo," as used in this contract provision, is calculated as the elapsed days from the vessel's final departure date from previous cargo port through vessel's final discharge date for the cargo in question.
- (2) "Vessel daily cost," as used in this contract provision, shall be determined as follows:
 - (i) **VOYAGE CHARTER TANKER.** At the per diem rate in the charter, except that the dead freight payable by the Contractor shall not exceed actual expense incurred by the Government under the charter.
 - (ii) **USS, USNS, OR TIME CHARTERED TANKER.** At the per diem rate for the tanker loaded, as published by the Military Sealift Command and in effect on the date loading of the tanker is completed.
- (3) "Total barrels scheduled to load," as used in this contract provision, is the total quantity (all products) reflected on the latest DD Form 1155.
- (4) "Total barrels loaded," as used in this contract provision, is the total quantity (all products) shown as loaded on the DD Form 250-1.

F109 IN-LINE BLENDING OF NONAVIATION PETROLEUM PRODUCTS (DLA ENERGY JAN 2012)

(a) In response to this solicitation, offerors may offer nonaviation petroleum products that use In-Line Blending (ILB) procedures for delivery into tankers and barges (vessels). Offerors planning to use ILB procedures to blend finished product, as it is being delivered into vessels, must include with the offer a detailed description of the ILB procedures, including quantity determination. Automatic, on-line test procedures must be described in detail, including whether these tests are ASTM (or equivalent) approved. ILB procedures must be acceptable to the Government. The Contractor has the option of meeting the requirements of either (b) or (c) below.

(b) The Contractor is responsible for product quality on board the vessel.

- (1) During an ILB operation, changes in the blend ratio may occur during vessel loadings. In order to assure the entire cargo is uniformly blended, sampling and testing on board the vessel are required. Although Section 4 of the Product Specification, Quality Assurance Provisions, defines a Bulk Lot as an indefinite quantity of a homogeneous mixture of material offered for acceptance in a single isolated container, sampling and full specification testing of each vessel tank system is acceptable.
- (2) The following vessel sampling and testing must be performed by the Contractor and substitutes for the Sampling and Testing requirements contained in the CONTRACTOR INSPECTION RESPONSIBILITIES contract text. All tests must be on-specification as evidence that the Contractor has met the contract product quality requirements.
 - (i) An appearance, gravity, and flash point (if product specification has a flash point requirement) on an all-level sample from each tank used in the loading. A half (0.5) liter sample from each tank will be retained for 45 days.
 - (ii) A full specification test series on a multiple tank composite sample representing each vessel tank system used in the loading. If more than four systems are used, only four multiple tank composite samples need to be tested. In this case, the

Contractor will ensure that multiple tank composite samples are representative of all product loaded, and the Contractor will determine which vessel tanks will be included in each multiple tank composite sample. A 20-liter multiple tank composite sample for each vessel tank system will be retained for 45 days.

(i) All time and costs associated with sampling and testing the finished product aboard the vessel will be borne by the Contractor.

(iv) If the product does not conform to specification aboard the vessel, the Government has the option to require the Contractor to pump the cargo back to the Contractor's facility. In this circumstance, title for the nonconforming product will revert to the Contractor, and the Contractor will have no right to payment for such product. All delays and costs associated with the nonconforming product, including demurrage and any vessel cleaning determined necessary by the Government, will be borne by the Contractor.

(c) The Contractor is responsible for product quality at the custody transfer point.

(3) Subdivisions (b)(2)(i) and (ii) above, sampling and testing, must still be performed.

(4) The Contractor must also obtain samples at the custody transfer point that are representative of the product in the various vessel tanks. Samples must be taken in accordance with ASTM D 4177. As a minimum, an 8-liter composite sample, representative of each quarter cargo, will be taken. One 4-liter sample from each of these composites will be retained for a period of 45 days.

(5) If all vessel tests required by subdivisions (b)(2)(i) and (ii) above conform to specification, it will be concluded the Contractor met the contract quality requirements and no additional testing of custody transfer samples will be required.

(6) If any vessel tests in subdivisions (b)(2)(i) and (ii) above are off-specification, the Contractor must perform a full specification test series on the applicable custody transfer composite sample(s) that represents the on board off- specification product. If the custody transfer point sample(s) conforms to specification, it will be concluded the Contractor met the contract quality requirements. If the custody transfer point sample(s) does not conform to specification, it will be concluded the Contractor did not meet the contract quality requirements and the Government has the option to require the Contractor to pump the cargo back to the Contractor's facility. In this circumstance, title for the nonconforming product will revert to the Contractor and the Contractor will have no right to payment for such product. All delays and costs associated with the nonconforming product, including demurrage and any vessel cleaning determined necessary by the Government, will be borne by the Contractor.

(d) The Contractor may inspect tankers and barges for suitability to load the intended cargo. If the Contractor chooses the paragraph (b) option to guarantee product quality on board the vessel and the Contractor and the U.S. Quality Representative (QR) disagree as to the suitability to load Government-furnished vessels, the determination of the Contractor will govern. If the Contractor chooses the paragraph (c) option to guarantee product quality at the custody transfer point and the Contractor and QR disagree as to the suitability to load Government-furnished vessels, the determination of the QR will govern.

(e) The Contractor must state in its offer whether it will meet either the paragraph (b) or (c) requirements.

SECTION G - CONTRACT ADMINISTRATION DATA

DFARS 252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (DEC 2018)

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

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area Work Flow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

“Payment request” and “receiving report” are defined in the clause at 252.232- 7003, Electronic Submission of Payment Requests and Receiving Reports.

b) *Electronic invoicing.* The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232- 7003, Electronic Submission of Payment Requests and Receiving Reports.

c) *WAWF access.* To access WAWF, the Contractor shall—

(1) Have a designated electronic business point of contact in the System for Award Management at <https://www.sam.gov>; and

(2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by- step procedures for self- registration available at this web site.

d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>

e) *WAWF methods of document submission.* Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

f) *WAWF payment instructions.* The Contractor shall use the following information when submitting payment requests and receiving reports in WAWF for this contract or task or delivery order:

(1) *Document type.* The Contractor shall submit payment requests using the following document type(s):

Receiving Report or Invoice and Receiving Report (Combo)

(2) Fast Pay requests are only permitted when Federal Acquisition Regulation (FAR) 52.213-1 is included in the contract.

(3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table*

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	TBD
Issue By DoDAAC	TBD
Admin DoDAAC	TBD
Inspect By DoDAAC	TBD
Ship To Code	TBD
Ship From Code	TBD
Mark For Code	TBD
Service Approver (DoDAAC)	TBD
Service Acceptor (DoDAAC)	TBD
Accept at Other DoDAAC	TBD

LPO DoDAAC	TBD
DCAA Auditor DoDAAC	TBD
Other DoDAAC(s)	TBD

(4) *Payment request.* The Contractor shall ensure a payment request includes documentation appropriate to the type of payment request in accordance with the payment clause, contract financing clause, or Federal Acquisition Regulation 52.216-7, Allowable Cost and Payment, as applicable.

(5) *Receiving report.* The Contractor shall ensure a receiving report meets the requirements of DFARS Appendix F.

g) *WAWF point of contact.*

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact.

DESC-BTechTeam@dla.mil

(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.
(End of clause)

G3 INVOICE NUMBERING REQUIREMENTS (DLA ENERGY AUG 1998)

Each invoice submitted for payment under this contract shall be identified by an individual invoice number. The number shall not be duplicated on subsequent invoices. Duplicate invoice numbers or invoices that do not include numbers may be rejected.

G6 INVOICE DISCREPANCIES (BULK) (DLA ENERGY JAN 2012)

- (a) In the event of a discrepancy between the invoiced quantity of fuel and the quantity of fuel received, as shown on the "Original Receiving Report for Payment of Invoice" form, as described in the SUBMISSION OF INVOICES FOR PAYMENT - COMMERCIAL ITEMS (BULK) contract text, the Contractor shall be paid for actual quantities of fuel received, based on the "Original Receiving Report for Payment of Invoice" form, at the applicable price in effect in accordance with the terms of the contract.
- (b) In the event of a discrepancy between the unit price on the invoice and the unit price as calculated under the contract, the Contractor shall be paid the applicable price in effect in accordance with the terms of the contract.

G12 SUPPLEMENTAL INVOICING INFORMATION (BULK) (DLA ENERGY SEP 2002)

Supplemental information required by the contract as authorized by 5 CFR part 1315.

- (a) Description of the item shall include the Government product code, such as JP8, JP5, F76, etc.
- (b) Pipeline shipments shall include the Commercial Batch Number for each pipeline shipment, if available. (For f.o.b. origin pipeline shipments, the Contractor will include the Commercial Batch Number as provided by the ordering office.)

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H19.02 REPORTING REQUIREMENTS FOR SHIPMENTS (DLA ENERGY JAN 2012)

- (a) Under Data Item Description (DID) Number DI-MGMT-80320 and AMSC Number S4068, the Contractor shall provide the required transaction data shown under (c) below.
- (b) The Contractor agrees to process all transactions or submit necessary documentation for the shipping data specified in (c) below for all f.o.b. origin shipments requiring transportation by pipeline, tank truck, or tank car within one business day from the closing of each transaction/business event. The Contractor further agrees to input/process the required data into the automated inventory and accounting system(s) designated or provided by the Government, or provide the supporting documentation to the appropriate DLA Energy region. Data specified shall be submitted to one of the following DLA Energy offices which are listed in the LIST OF INSPECTION OFFICES FOR DLA ENERGY CONTRACTS provision.

DLA Energy Americas – East DLA Energy Americas – West DLA Energy Europe
DLA Energy Pacific DLA Energy Middle East

Any questions regarding the submission of data under a particular contract should be directed to the responsible DLA Energy Contracting Officer.

- (c) In order of preference, shipment data may be submitted via direct input into the inventory accounting system or facsimile (FAX).
- (1) If the direct input into the inventory accounting system is used, transactions must be processed in one business day from the completion of the business event.
- (2) If the FAX method is used, the Contractor shall transmit one copy of the signed DD Form 250, Material Inspection and Receiving Report.

DATA

- A.
- B.
- C.
- D.
- E.
- F.
cited
- G.
shipments only
- H.
- I.
- J.
shipments only
- K.
shipments
- L.

DD FORM 250 BLOCK NO./DATA

- National stock number 16 Enter as cited
- Quantity 17 Enter as cited
- Contract number 1 Enter as cited
- Contract line item number 15 Enter as cited
- Shipment number/SUPAAC 2 Enter as cited
- Day commenced loading/pumping 16 Enter for pipeline, if
- Bill of lading (B/L) number 4 Enter as cited, for f.o.b. origin
- Delivery order number 1 Enter as cited
- Final shipment indicator 2 Enter, if cited, after "ShipmentNo."
- Product Shipment Day 3 Enter as cited, for f.o.b. origin
- Product receipt day 22 Enter as cited, for other than f.o.b. origin
- Mode of shipment 4 Enter as cited

- (3) For those Contractors that are authorized Alternate Release Procedures on f.o.b. origin shipments, the unsigned DD Form 250 shall be sent to the applicable DLA Energy office in lieu of the signed copy referenced in (2) above.

SECTION I - CONTRACT CLAUSES

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)

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

Agency means "executive agency" as defined in Federal Acquisition Regulation (FAR) [2.101](#).

Covered Federal action means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450b](#)) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* [31 U.S.C. 1352](#) prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with [31 U.S.C. 1352](#) the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR [3.803\(a\)\(2\)\(iii\)](#)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.*

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.*

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by [31 U.S.C. 1352](#). An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.*

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR [3.808](#) on the date of subcontract award. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.

(End of clause)

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 this 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.

(End of clause)

FAR 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)

FAR 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUNE 2016)

FAR.207-4 ECONOMIC PURCHASE QUANTIT-SUPPLIES (AUG 1987). See Attachment 3 - Fillable Clauses

FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (NOV 2021)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

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

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on

Government bill of lading;

- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in

this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C.3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.-*

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C.3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

- (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
- (B) Affected contract number and delivery order number, if applicable;
- (C) Affected line item or subline item, if applicable; and
- (D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if-

- (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
- (B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
- (C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

- (A) The date fixed under this contract.
- (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

- (A) The date on which the designated office receives payment from the Contractor;
- (B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR [32.608-2](#) in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work

performed or costs incurred which reasonably could have been avoided.

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

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

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

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [41 U.S.C. 4712](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
 - (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
 - (3) The clause at [52.212-5](#).
 - (4) Addenda to this solicitation or contract, including any license agreements for computer software.
 - (5) Solicitation provisions if this is a solicitation.
 - (6) Other paragraphs of this clause.
 - (7) The [Standard Form 1449](#).
 - (8) Other documents, exhibits, and attachments.
 - (9) The specification.
- (t) [Reserved]
- (u) Unauthorized Obligations.
- (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:
- (i) Any such clause is unenforceable against the Government.
 - (ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.
 - (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
- (2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.
- (v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

ADDENDA TO FAR 52.212-4

- (a) *Inspection/Acceptance.* In addition to the terms listed, inspection/acceptance shall also include the requirements defined in QAPs E1, E12, E21.01, E22, E35, and E40.01.
- (c) *Changes.* Subsection (c) is replaced with FAR 52.243-1 (incorporated by reference).
- (k) *Taxes.* Subsection (k) is replaced with the following: "The contract price includes all applicable Federal, State, and local taxes and duties except as provided in contract texts I28.01, I28.02-1, I28.03-1, and I28.24."
- (m) *Termination for cause.* In addition to the terms listed, termination for cause shall also include the terms defined in I11.01-2.

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS-COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (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 products and commercial services:

(1) [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](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(6) [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](#))).

(a) 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 products and commercial services:

[Contracting Officer check as appropriate.]

 X (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (NOV 2021) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

 X (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ([41 U.S.C. 3509](#)).

 X (3) [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.)

 X (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

 (5) [Reserved].

 (6) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

 (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

 X (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) ([31 U.S.C. 6101 note](#)).

 X (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ([41 U.S.C. 2313](#)).

 (10) [Reserved].

 (11) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) ([15 U.S.C. 657a](#)).

 (12) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

 (13) [Reserved]

 (14) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (NOV 2020) ([15 U.S.C. 644](#)).

 (ii) Alternate I (MAR 2020) of [52.219-6](#).

 (15) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (NOV 2020) ([15 U.S.C. 644](#)).

- ☐ (ii) Alternate I (MAR 2020) of [52.219-7](#).
- ☒ (16) [52.219-8](#), Utilization of Small Business Concerns (Deviation 2023 O0002) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- ☐ (17)(i) [52.219-9](#), Small Business Subcontracting Plan (OCT 2022) ([15 U.S.C. 637\(d\)\(4\)](#)).
- ☐ (ii) Alternate I (NOV 2016) of [52.219-9](#).
- ☐ (iii) Alternate II (NOV 2016) of [52.219-9](#).
- ☐ (iv) Alternate III (JUN 2020) of [52.219-9](#).
- ☐ (v) Alternate IV (SEP 2021) of [52.219-9](#).
- ☐ (18) (i) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ([15 U.S.C. 644\(r\)](#)).
- ☐ (ii) Alternate I (MAR 2020) of [52.219-13](#).
- ☒ (19) [52.219-14](#), Limitations on Subcontracting (OCT 2022) ([15 U.S.C. 637s](#)).
- ☒ (20) [52.219-16](#), Liquidated Damages—Subcontracting Plan (SEP 2021) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- ☐ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set- Aside (OCT 2022) ([15 U.S.C. 657f](#)).
- ☒ (22) (i) [52.219-28](#), Post Award Small Business Program Rerepresentation (OCT 2022) ([15 U.S.C. 632\(a\)\(2\)](#)).
- ☐ (ii) Alternate I (MAR 2020) of [52.219-28](#).
- ☐ (23) [52.219-29](#), Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) ([15 U.S.C. 637\(m\)](#)).
- ☐ (24) [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 (OCT 2022) ([15 U.S.C. 637\(m\)](#)).
- ☐ (25) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (MAR 2020) ([15 U.S.C. 644\(r\)](#)).
- ☒ (26) [52.219-33](#), Nonmanufacturer Rule (SEP 2021) ([15U.S.C. 637\(a\)\(17\)](#)).
- ☒ (27) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).
- ☐ (28) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (JAN 2022) (E.O.13126).
- ☒ (29) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- ☒ (30) (i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).
- ☐ (ii) Alternate I (FEB 1999) of [52.222-26](#).
- ☒ (31) (i) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- ☐ (ii) Alternate I (JUL 2014) of [52.222-35](#).
- ☒ (32) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).
- ☐ (ii) Alternate I (JUL 2014) of [52.222-36](#).
- ☒ (33) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).
- ☒ (34) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- ☒ (35) (i) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ([22 U.S.C. chapter 78](#) and E.O. 13627).

- __ (ii) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- __ (36) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR [22.1803](#).)
- __ (37) (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA– Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- __ (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- X (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- __ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).
- __ (40) (i) [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](#).
- __ (41) (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).
- __ (ii) Alternate I (Jun2014) of [52.223-14](#).
- __ (42) [52.223-15](#), Energy Efficiency in Energy- Consuming Products (MAY 2020) ([42 U.S.C. 8259b](#)).
- __ (43) (i) [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](#).
- X (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).
- __ (45) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).
- __ (46) [52.223-21](#), Foams (Jun2016) (E.O. 13693).
- X (47) (i) [52.224-3](#) Privacy Training (JAN 2017) (5 U.S.C. 552 a).
- __ (ii) Alternate I (JAN 2017) of [52.224-3](#).
- __ (48) (i) [52.225-1](#), Buy American-Supplies (OCT 2022) ([41 U.S.C. chapter 83](#)).
- __ (ii) Alternate I (OCT 2022) of [52.225-1](#).
- __ (49) (i) [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act (OCT 2022) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) 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 (JAN 2021) of [52.225-3](#).
- __ (iii) Alternate II (JAN 2021) of [52.225-3](#).
- __ (iv) Alternate III (JAN 2021) of [52.225-3](#).
- __ (v) Alternate IV (Oct 2022) of [52.225-3](#).
- __ (50) [52.225-5](#), Trade Agreements (OCT 2019) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).
- X (51) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes

administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (52) [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](#)).

___ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).

___ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ([42 U.S.C. 5150](#)).

X (55) [52.229-12](#), Tax on Certain Foreign Procurements (FEB 2021).

___ (56) [52.232-29](#), Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

___ (57) [52.232-30](#), Installment Payments for Commercial Products and Commercial Services (NOV 2021) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

X (58) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ([31 U.S.C. 3332](#)).

___ (59) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).

___ (60) [52.232-36](#), Payment by Third Party (MAY 2014) ([31 U.S.C. 3332](#)).

___ (61) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

X (62) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ([15 U.S.C. 637\(d\)\(13\)](#)).

X (63) (i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ([46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)).

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

___ (iii) Alternate II (NOV 2021) of [52.247-64](#).

(b) 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 products and commercial services: [*Contracting Officer check as appropriate.*]

___ (1) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)).

___ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

___ (3) [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](#) and [41 U.S.C. chapter 67](#)).

___ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

___ (5) [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](#)).

___ (6) [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](#)).

___ (7) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

___ (8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

___ (9) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ([42 U.S.C. 1792](#)).

(c) *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](#), on the date of award of this contract, 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.

(d)

(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 products or commercial services. 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 (NOV 2021) ([41 U.S.C. 3509](#)).

(ii) [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](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(iv) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) [52.219-8](#), Utilization of Small Business Concerns (Deviation 2023 O0002) ([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 THE APPLICABLE THRESHOLD SPECIFIED IN FAR 19.702(A) ON THE DATE OF SUBCONTRACT AWARD, THE SUBCONTRACTOR MUST INCLUDE 52.219-8 IN LOWER TIER SUBCONTRACTS THAT OFFER SUBCONTRACTING OPPORTUNITIES.

(vi) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(vii) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O.11246).

(viii) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)).

(ix) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)).

(x) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)).

(xi) [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](#).

(xii) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)).

(A) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ([22 U.S.C. chapter 78](#) and E.O 13627).

(B) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter 78 and E.O. 13627](#)).

(xiii) [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](#)).

(xiv) [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](#)).

(xv) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (E.O. 12989).

(xvi) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(xvii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O.13706).

(A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).

(B) Alternate I (JAN 2017) of [52.224-3](#).

(xviii) [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](#)).

(xix) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xx) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ([46 U.S.C. 55305](#) 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 products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

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

Alternate II. (Jul 2021) As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

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

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

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

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

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

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

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Jun 2020) ([41 U.S.C. 3509](#)).

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

(C) [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).

(D) [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).

(E) [52.219-8](#), Utilization of Small Business Concerns (Oct 2018) ([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 the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(F) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015). (G) [52.222-26](#), Equal Opportunity (Sep 2016) (E.O. 11246).

(H) [52.222-35](#), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C. 4212](#)).

(I) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jun 2020) ([29 U.S.C. 793](#)).

(J) [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](#).

(K) [52.222-41](#), Service Contract Labor Standards (Aug 2018) ([41 U.S.C. chapter 67](#)).

(L) ____ (I) [52.222-50](#), Combating Trafficking in Persons (Oct 2020) ([22 U.S.C. chapter 78](#) and E.O 13627).

- ____ (2) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78 and E.O. 13627](#)).
- (M) [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](#)).
- (N) [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](#)).
- (O) [52.222-54](#), Employment Eligibility Verification (Oct 2015) (Executive Order 12989).
- (P) [52.222-55](#), Minimum Wages Under Executive Order 13658 (Nov 2020).
- (Q) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706). (R) (I) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).
- (2) Alternate I (Jan 2017) of [52.224-3](#).
- (S) [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).
- (T) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (Jun 2020) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (U) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

FAR 52.216-18 ORDERING (AUG 2020)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the date of award through final delivery.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) A delivery order or task order is considered "issued" when—
- (1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;
 - (2) If sent by fax, the Government transmits the order to the Contractor's fax number; or
 - (3) If sent electronically, the Government either—
 - (i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or
 - (ii) Distributes the delivery order or task order via email to the Contractor's email address.
- (d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after October 30, 2021.

(End of clause)

FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (OCT 2022)

- (a) Evaluation preference.

- (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except-
 - (i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and
 - (ii) Otherwise successful offers from small business concerns.
- (2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.
- (3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.
- (b) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes.
 - Offeror elects to waive the evaluation preference.
- (c) *Joint venture.* A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business parties to the joint venture must be more than administrative functions.

(End of clause

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2022)

- (a) This clause does not apply to small business concerns.
- (b) *Definitions.* As used in this clause—
 - Alaska Native Corporation (ANC)* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).
 - Commercial plan* means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).
 - Commercial product* means a product that satisfies the definition of "commercial product" in Federal Acquisition Regulation (FAR) [2.101](#).
 - Commercial service* means a service that satisfies the definition of "commercial service" in FAR [2.101](#).
 - Electronic Subcontracting Reporting System (eSRS)* means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.
 - Indian tribe* means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).
 - Individual subcontracting plan* means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.
 - Master subcontracting plan* means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.
 - Reduced payment* means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.
 - Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.
 - Total contract dollars* means the final anticipated dollar value, including the dollar value of all options.
 - Untimely payment* means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if–

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of–

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts, including all indirect costs except as described in paragraph (g) of this clause, to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to–

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with–

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will–

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity *contracts with individual subcontracting plans where the contract is intended for use by multiple agencies*;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, indicating–

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact–

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through–

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if–

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see [52.242-5](#)).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Dynamic Small Business Search (DSBS) at <https://web.sba.gov/pro-net/search/dsp/dsbs.cfm>.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial product or commercial service. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR [19.702\(a\)](#), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at FAR [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services, or when the subcontractor provides a commercial product or commercial service subject to the clause at FAR [52.244-6](#), Subcontracts for Commercial Products and Commercial Services, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to [19.702 a\)\(1\)\(iii\)](#) or [19.301-2\(e\)](#), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR [19.702\(a\)](#), and the contractand contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan—*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEVIATION 2021- O0008)

(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\(a\)\(3\)](#);

(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\(a\)\(3\)](#);

- (3) Contracts that have been awarded on a sole-source basis in accordance with subparts [19.8](#), [19.13](#), [19.14](#), and [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](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); or
 - (ii) Issued directly to small business concerns under multiple-award contracts as described in [19.504\(c\)\(1\)\(ii\)](#);
- (5) Orders, regardless of dollar value, that are—
 - (i) Set aside in accordance with subparts [19.8](#), [19.13](#), [19.14](#), or [19.15](#) under multiple-award contracts, as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#); or
 - (ii) Issued directly to concerns that qualify for the programs described in subparts [19.8](#), [19.13](#), [19.14](#), or [19.15](#) under multiple-award contracts, as described in [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.

(End of clause)

FAR 52.222-19 CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES (JAN 2022)

- (a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in-
 - (1) Canada, and the anticipated value of the acquisition is \$25,000 or more;
 - (2) Israel, and the anticipated value of the acquisition is \$50,000 or more;
 - (3) Mexico, and the anticipated value of the acquisition is \$92,319 or more; or
 - (4) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is \$183,000 or more.
- (b) *Cooperation with Authorities.* To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed

End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) Violations. The Government may impose remedies set forth in paragraph (d) for the following violations:

- (1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.
 - (2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.
 - (3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.
 - (4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)
- (d) Remedies. (1) The Contracting Officer may terminate the contract.
- (2) The suspending official may suspend the Contractor in accordance with procedures in FAR subpart 9.4.
- (3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

(End of clause)

FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021)

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No.313 (including revisions adopted during the term of the contract).
- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert <i>None</i>)	Identification No.
_____	_____
_____	_____
_____	_____

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No.313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No.313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered non-responsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No.313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-

- (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
- (3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

Federal Acquisition Regulation

(FAR): https://www.ecfr.gov/cgi-bin/text-idx?SID=09133e44280d3d3f07553a99b0a1200d&mc=true&tpl=/ecfrbrowse/Title48/48tab_02.tpl

Department of Defense Federal Acquisition Regulation Supplement

(DFARS): <https://www.acq.osd.mil/DPAP/dars/dfarspgi/current/index.html>

Defense Logistics Agency Directive

(DLAD): <https://www.dla.mil/HQ/Acquisition/Offers/DLAD.aspx>

ADDITIONAL CLAUSES INCORPORATED BY REFERENCE:

FAR 52.203-3 GRATUITIES (APR 1984)

FAR 52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2018)

FAR 52.204-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (AUG 2020)

FAR 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)

FAR 52.204-22 ALTERNATIVE LINE ITEM PROPOSAL (JAN 2017)

FAR 52.207-4 ECONOMIC PURCHASE QUANTITY-SUPPLIES

FAR 52.207-6 SOLICITATION OF OFFERS FROM SMALL BUSINESS CONCERNS AND SMALL BUSINESS TEAMING ARRANGEMENTS OR JOINT VENTURES (MULTIPLE-AWARD CONTRACTS)(OCT 2016)

FAR 52.232-11 EXTRAS (APR 1984)

FAR 52.232-17 INTEREST (MAY 2014)

FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)

FAR 52.233-2 SERVICE OF PROTEST (SEPT 2006)

FAR 52.242-13 BANKRUPTCY (JULY 1995)

FAR 52.242-15 STOP-WORK ORDER (AUG 1989) FAR 52.243-1 CHANGES - FIXED PRICE (AUG 1987)

FAR 52.246-2 INSPECTION OF SUPPLIES FIXED PRICE (AUG 1996) FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012)

FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

DFARS 252.203-7000 REQUIRMENTS RELATING TO COMPENSATION OF FORMER DoD OFFICIALS (SEP 2011)

DFARS 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

DFARS 252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (AUG 2019)

DFARS 252.204-7004 LEVEL I ANTITERRORISM AWARENESS TRAINING FOR CONTRACTORS (FEB 2019)

DFARS 252.204-7009 LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016)

DFARS 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016)

DFARS 252.204-7019 NOTICE OF NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2020)

DFARS 252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2020)

DFARS 252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDER (DEC 1991)

DFARS 252.215-7008 ONLY ONE OFFER (JUL 2019)

DFARS 252.215-7010 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA (JUL 2019)

DFARS 252.219-7000 ADVANCING SMALL BUSINESS GROWTH (SEP 2016)

DFARS 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DoD) CONTRACTS)- BASIC (DEC 2019)

DFARS 252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013)

DFARS 252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC 2017)

DFARS 252.225-7007 PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018)

DFARS 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)

DFARS 252.225-7020 TRADE AGREEMENTS CERTIFICATE-BASIC (NOV 2014)

DFARS 252.225-7021 TRADE AGREEMENTS-BASIC (DEVIATION 2020-O0019 – Revision 1) (AUG 2020)

DFARS 252.225-7048 EXPORT CONTROLLED ITEMS (JUN 2013)

DFARS 252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS AND TUNGSTEN(OCT 2020)

DFARS 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMICENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (APR 2019)

DFARS 252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (DEC 2018)

DFARS 252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)

DFARS 252.232-7017 ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS—PROHIBITION ON FEES AND CONSIDERATION (APR 2020)

DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2012)

DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (DOD CONTRACTS)(JAN 2021)

DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (FEB 2019)

DFARS 252.251-7000 ORDERING FROM GOVERNMENT SUPPLY SOURCES (AUG 2012)

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

(End of clause)

DFARS 252.204-7008 COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (OCT 2016)

- (a) *Definitions.* As used in this provision—
“Controlled technical information,” “covered contractor information system,” “covered defense information,” “cyber incident,” “information system,” and “technical information” are defined in clause [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident Reporting.
- (b) The security requirements required by contract clause [252.204-7012](#), shall be implemented for all covered defense information on all covered contractor information systems that support the performance of this contract.
- (c) For covered contractor information systems that are not part of an information technology service or system operated on behalf of the Government (see [252.204-7012](#)(b)(2)—
- (1) By submission of this offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (see <http://dx.doi.org/10.6028/NIST.SP.800-171>) that are in effect at the time the solicitation is issued or as authorized by the contracting officer not later than December 31, 2017.
- (2)
- (i) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800-171 that are in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DoD Chief Information Officer (CIO), a written explanation of—
- (A) Why a particular security requirement is not applicable; or
- (B) How an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.
- (ii) An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800-171 requirements in writing prior to contract award. Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting contract.

DFARS 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019)

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

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner

that maintains the integrity of the data.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013 , Rights in Technical Data—

Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010 , Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibesia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor’s requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <https://dibnet.dod.mil>.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <https://dibnet.dod.mil>.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <https://public.cyber.mil/eca/>.

(d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the

contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

DFARS 252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (JAN 2021)

Definitions. As used in this clause—

“Covered defense 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) Telecommunications services provided by such entities or using such equipment; or
- (3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Covered foreign country” means—

- (1) The People's Republic of China; or
- (2) The Russian Federation.

“Covered missions” means—

- (1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or
- (2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

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

(b) *Prohibition.* In accordance with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), the contractor shall not provide to the Government any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless the covered defense telecommunication equipment or services are covered by a waiver described in Defense Federal Acquisition Regulation Supplement [204.2104](#).

(c) *Procedures.* The Contractor shall review the list of excluded parties in the System for Award Management (SAM) at <https://www.sam.gov> for entities that are excluded when providing any equipment, system, or service, to carry out covered missions, that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) *Reporting.*

(1) In the event the Contractor identifies covered defense 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, the Contractor shall report at <https://dibnet.dod.mil> the information in paragraph (d)(2) of this clause.

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

(i) Within 3 business days from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; 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 30 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 a covered defense 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), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

DFARS 252.223-7001 HAZARD WARNING LABELS (DEC 1991)

(a) “Hazardous material,” as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

- (1) Federal Insecticide, Fungicide and Rodenticide Act;
- (2) Federal Food, Drug and Cosmetics Act;
- (3) Consumer Product Safety Act;
- (4) Federal Hazardous Substances Act; or
- (5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert “None.”)	ACT

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

252.215-7016 NOTIFICATION TO OFFERORS—POST AWARD DEBRIEFINGS (MAR 22)

(a) Definition. As used in this provision—

" Nontraditional defense contractor " means an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement (10 U.S.C. 2302(9)).

(b) Postaward debriefing.

- (1) Upon timely request, the Government will provide a written or oral postaward debriefing to successful or unsuccessful offerors for contract awards valued at \$10 million or more, while protecting the confidential and proprietary information of other offerors. The request is considered timely if received within 3 days of notification of contract award.
- (2) When required, the minimum postaward debriefing information will include the following:
 - (i) For contracts in excess of \$10 million and not in excess of \$100 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.
 - (ii) For contracts in excess of \$100 million, disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.
- (3) If a required postaward debriefing is provided—
 - (i) The debriefed Offeror may submit additional written questions related to the debriefing not later than 2 business days after the date of the debriefing;
 - (ii) The agency will respond in writing to timely submitted additional questions within 5 business days after receipt by the contracting officer; and
 - (iii) The postaward debriefing will not be considered to be concluded until the later of—
 - (A) The date that the postaward debriefing is delivered, orally or in writing; or
 - (B) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.

(c) Contract performance. The Government may suspend performance of or terminate the awarded contract upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (c)(1) through (3) of this provision, whichever is later:

- (1) Within 10 days after the date of contract award.
- (2) Within 5 days after a debriefing date offered to the protestor under a timely debriefing request in accordance with Federal Acquisition Regulation (FAR) 15.506 unless an earlier debriefing date is negotiated as a result.
- (3) Within 5 days after a postaward debriefing under FAR 15.506 is concluded in accordance with Defense Federal Acquisition Regulation Supplement 215.506-70 (b).

(End of provision)

DFARS 252.225-7055 Representation Regarding Business Operations with the Maduro Regime (MAY 2022)

(a) Definitions. As used in this provision—

Agency or instrumentality of the government of Venezuela, business operations, government of Venezuela, and person have the meaning given in the clause [252.225-7056](#), Prohibition Regarding Business Operations with the Maduro Regime, of this solicitation.

(b) Prohibition. In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) Representation. By submission of its offer, the Offeror represents that the Offeror is a person that—

- (1) Does not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government; or
- (2) Has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(End of provision)

DFARS 252.225-7056 Prohibition Regarding Business Operations with the Maduro Regime (MAY 2022)

(a) Definitions. As used in this clause—

Agency or instrumentality of the government of Venezuela means an agency or instrumentality of a foreign state as defined in 28 U.S.C. 1603(b), with each reference in section 1603(b) to a foreign state deemed to be a reference to Venezuela.

Business operations means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

Government of Venezuela means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

Person means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or (2) of this definition.

(b) Prohibition. In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) The Contractor shall—

(1) Not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government; or

(2) Have a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial products.

(End of clause)

DFARS 252.225-7972 Prohibition on THE Procurement of Foreign-Made Unmanned Aircraft Systems (May 2020) (DEVIATION 2020-O0015)

(a) *Prohibition*. In accordance with section 848 of the National Defense Authorization Act for Fiscal Year 2020, the Contractor shall not provide or use in the performance of this contract—

(1) An unmanned aircraft system (UAS), or any related services or equipment, that—

(i) Is manufactured in the People's Republic of China or by an entity domiciled in the People's Republic of China;

(ii) Uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in the People's Republic of China or by an entity domiciled in the People's Republic of China;

(iii) Uses a ground control system or operating software developed in the People's Republic of China or by an entity domiciled in the People's Republic of China; or

(iv) Uses network connectivity or data storage located in, or administered by an entity domiciled in, the People's Republic of China; or

(2) A system for the detection or identification of a UAS, or any related services or equipment, that is manufactured—

(i) In the People's Republic of China; or

(ii) By an entity domiciled in the People's Republic of China.

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

(End of clause)

252.247-7003 PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JUN 2013)

(a) This clause implements section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(b) Unless an exception is authorized by the Contracting Officer, the Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, with motor carriers, brokers, or freight forwarders.

(End of clause)

DFARS 252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (JUN 2019)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term “supplies” is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it—

Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause.

(End of provision)

DLAD 52.233-9001 DISPUTES – AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (DLAD, JUN 2020)

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and legal counsel. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this clause, check here []. Alternate wording may be negotiated with the contracting officer.

PROCUREMENT NOTE C02 MANUFACTURING PHASE-OUT OR DISCONTINUATION OF PRODUCTION, DIMINISHING SOURCES, AND OBSOLETE MATERIALS OR COMPONENTS (DEC 2016)

The contractor shall notify the contracting officer immediately upon determining the unavailability of obsolete materials or components. The contractor may recommend a solution to include the impact on the contract price and delivery. The contractor shall not initiate any item redesign or incur any additional costs without the express, written authorization of the contracting officer.

In the event that manufacturing phase-out or discontinuance of production of such items is contemplated, the contractor is required to notify the contracting officer and publish the discontinuance in the Government-Industry Data Exchange Program (GIDEP), where feasible; and to provide immediate advance notice of production phase-out to DLA DMSMS at dscc.dmsms@dla.mil.

PROCUREMENT NOTE C03 CONTRACTOR RETENTION OF SUPPLY CHAIN TRACEABILITY DOCUMENTATION (JUN 2020)

(1) By submitting a quotation or offer, the contractor, if it is not the manufacturer of the item, is confirming it currently has, or will obtain before delivery, and shall retain documented evidence (supply chain traceability documentation), as described in paragraph (2) of this procurement note, demonstrating the item is from the approved manufacturer and conforms to the technical requirements.

(2) At a minimum, the supply chain traceability documentation for the item shall include: basic item description, part number and/or national stock number, manufacturing source, manufacturing source's Commercial and Government Entity (CAGE) code, and clear identification of the name and location of all supply chain intermediaries between the manufacturer to the contractor to item(s) acceptance by the Government. The documentation should also include, if available, the manufacturer's batch identification for the item(s), such as date codes, lot codes, or serial numbers.

(3) Contractors can find examples of acceptable supply chain traceability documentation at the Counterfeit Detection and Avoidance Program (CDAP) website (<http://www.dla.mil/LandandMaritime/Business/Selling/Counterfeit-Detection-Avoidance-Program/>).

(4) The contractor shall immediately make documentation available to the contracting officer upon request. The contracting officer determines the acceptability and sufficiency of documentation. The contractor shall retain supply chain traceability documentation for six years after final payment under this contract for audit and other valid government purposes. If the contractor fails to retain or provide the documentation, or the contracting officer finds the documentation to be unacceptable, the contracting officer may take corrective action, including, but not limited to, cancellation of undelivered orders or rejection of delivered supplies.

PROCUREMENT NOTE E05 PRODUCT VERIFICATION TESTING (MAY 2020)

(1) Product verification testing (PVT) under this procurement note will only apply when the contracting officer specifically invokes it in writing. The contracting officer may invoke PVT at or after contract award. If the contracting officer invokes PVT at contract award, the contract will explicitly state this testing requirement. If the contracting officer invokes PVT after contract the contractor and the cognizant DCMA ACO. The Government will perform PVT testing at a Government-designated testing laboratory.

(2) unless the contracting officer directs it to do so in writing. The Government will provide the PVT results to the contractor within 20 business days after receipt at the Government testing facility, unless the Government specifies otherwise in writing.

(3) The contractor shall provide and maintain an inspection system acceptable to the Government in accordance with FAR Clause 52.246-2 or 52.246-3; and maintain and make available all records evidencing those details if requested by the Government. When the Government finds evidence of risk associated with the contractor's sampling process, the Government may witness and evaluate the contractors sampling process. The contractor shall randomly select samples from the production lot(s), unless the contracting officer specifies otherwise in writing. The contractor shall ship the selected PVT samples with a copy of the system of record receiving report (i.e., WAWF, DD Form 250, or commercial shipping document) and the contractor's signed DD Form 1222. The contractor shall prepare the shipping container(s) by marking the external packages in bold letters, "Product Verification Test Samples – Do Not Post to Stock," Contract Number [*contractor insert*] and Lot/Item Number [*contractor insert*] adjacent to the MIL-STD-129 (latest revision) identification markings. The contractor shall use a hard copy of the system of record receiving report as a packing list, in accordance with DFARS Appendix F. The contractor shall mark the exterior of the shipping container in accordance with MIL-STD- 129 (latest revision), paragraph 5.11. The contractor shall send samples by traceable means (e.g., certified or registered mail, United Parcel Service, Federal Express). The contractor shall include the following in the interior package:

- (a) Hard copies of the contract;
- (b) Material certifications/process operation sheets; and
- (c) Drawings used to manufacture the units and return shipping information.

(4) The Government will return samples that pass testing and are not destroyed during evaluation to the contractor at the Government's expense for the contractor to include as part of the total contract quantity to be delivered under the contract. The contractor and Government may agree to dispose of samples not destroyed when the cost of the item does not justify the shipping expense. If the Government does not return approved samples that pass testing to the contractor, the Government will consider those samples as part of the contract quantity for payment and delivery.

(5) If samples fail testing, the Government may reject the entire contract lot from which the contractor took the samples. The Government may, at its discretion, retain samples that fail testing without obligation to the contractor.

PROCUREMENT NOTE L06 Agency Protests (DEC 2016)

Interested parties may file an agency level protest with the contracting officer or may request an independent review by the chief of the contracting office (CCO). Independent review by the CCO is an alternative to consideration by the contracting officer and is not available as an appellate review of a contracting officer decision on a protest previously filed with the contracting officer. Absent a clear indication of the intent to file an agency level protest with the CCO for independent review, protests will be presumed to be protests to the contracting officer.

11.01 DEFINITIONS (DLA ENERGY JUN 2009)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) Quality Assurance Representative (QAR) is a Government Representative authorized to represent the Contracting Officer to assure the Contractor complies with the contractual requirements in furnishing petroleum products and services.

(b) Ordering Officer means whichever of the following or their designated representatives is applicable: (1) the Commander, DLA Energy; (2) the Commander, Defense General Supply Center; (3) the Commander, U.S. Army Petroleum Center; (4) the Commanding Officer, U.S. Navy Petroleum Office; (5) the Director of Air Force Aerospace Fuels; (6) the Chief of the Air Force Aerospace Fuels Office; (7) the Officer in charge of the Federal Government activity encompassing any delivery point indicated in the Schedule; (8) the Commanding Officer or the Master of the vessel to be bunkered; (9) any Government Contractor furnishing evidence of authority to order under this contract;

(10) the head of any Federal Government agency; (11) the pilot, the flight commander, the aircraft commander or the crew chief of the U.S. designated aircraft authorized to place orders against into-plane contracts; (12) the Contracting Officer; (13) the individual in charge of ordering coal at the receiving Government activity; (14) the driver of a Federal vehicle or boat, or the pilot of a Federal aircraft authorized

to place orders under a service station contract; (15) the Navy Fleet Commanders;
(16) the Defense Attaché .

(c) The acronym TK means tanker, B means barge, TC means tank car, T means truck, TT means transport truck, TTR means truck and trailer, TW means tank wagon, P means pipeline, and MSS means Marine Service Station. The acronyms or terms TT or transport truck and TTR or truck and trailer mean tank truck equipment, whereas the acronym or term T or truck means truck equipment for hauling drummed or packaged supplies. The acronym SW means supplier's works, CFD means Contractor-furnished drum, and GFD means Government- furnished drum.

(d) Supplies means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea. An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(e) Acceptance means the act of an authorized Representative of the Government by which the Government, for itself, or as an agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered, as partial or complete performance of the contract. For f.o.b. origin delivery acceptance occurs when the Government QAR signs the Material Inspection and Receiving Report (DD Form 250 series document). For f.o.b. destination delivery, acceptance occurs when the authorized Government Representative signs the DD Form 250 series document or the contractor's shipping document.

(f) Calibration means the comparison of a measurement system or device of unverified accuracy to a measurement system or device of known or greater accuracy to detect and correct any deviation from required performance specifications of the unverified measurement system or device.

(g) The terms isolated system and segregated system mean a system that has a positive separation from other systems in a tank farm through the means of blind flanges, locked double-block and bleed type valves, etc. Dedicated system means a system that is self-contained and for the exclusive use of a particular product.

(h) Common system means a system that usually utilizes a manifold or pipeline that handles more than one product exclusively.

111.01-2 ADMINISTRATIVE COST OF TERMINATION FOR CAUSE – COMMERCIAL ITEMS (DLA ENERGY FEB 1996)

- In the event this contract is terminated for cause, in whole or in part, the Government will incur administrative costs.
- The Contractor agrees to pay all administrative costs associated with a contract termination action. The minimum amount the Contractor shall pay for each termination action is \$500. This payment for administrative costs is in addition to any excess re-procurement costs and any other remedies or damages resulting from the termination.
- The term **termination action**, as used herein, means the termination for cause, including any associated re- procurement effort, involving—
 - Any single order or any group of orders terminated together;
 - Any item or group of items terminated together; or
 - The entire contract.

128.01 FEDERAL, STATE, AND LOCAL TAXES (DLA ENERGY NOV 2011) (DEVIATION)

- (a) As used in this contract provision—
- (1) **After-imposed tax** means any new or increased Federal, State, or local tax that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.
 - (2) **After-relieved tax** means any amount of Federal, State, or local tax that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
 - (3) **All applicable Federal and State taxes** means all excise taxes that the taxing authority is imposing and collecting on the transactions or property covered by this contract pursuant to written ruling or regulation in effect on the contract date.
 - (4) **Contract date** means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for final revised prices.
 - (5) **Local taxes** means taxes levied by the political subdivisions of the States, District of Columbia, or outlying areas of the United States, e.g., cities and counties.
 - (6) **Outlying areas** means—
 - (i) **Commonwealths.** Puerto Rico and the Northern Mariana Islands;
 - (ii) **Territories.** American Samoa, Guam, and the U.S. Virgin Islands; and
 - (iii) **Minor outlying islands.** Baker Island; Howland Island, Jarvis Island; Johnston Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Atoll.
 - (7) **State taxes** means taxes levied by the States, the District of Columbia, or outlying areas of the United States.
 - (8) **Tax** means taxes, duties and environmental or inspection fees, except social security or other employment taxes.
- (b) The contract price includes all applicable Federal, State, and local taxes, except as otherwise provided. (See either the FEDERAL

AND STATE TAXES/FEEs or FEDERAL, STATE, AND LOCAL TAXES AND FEES contract provision.)

(c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.

(d) The contract price shall be decreased by the amount of any after-relieved tax.

(e) The contract price shall also be decreased by the amount of any tax that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any tax that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

128.02-1 FEDERAL AND STATE TAXES/FEEs (DLA ENERGY SEP 2019)

(a) (a) **FEDERAL EXCISE TAXES EXCLUDED.** Contract prices for fuel and oils furnished under this contract exclude Federal Excise Tax (FET). A Contractor not permitted by Internal Revenue Service (IRS) regulations to sell fuel tax- free must state that in its offer. Contractors shall invoice applicable FET as follows:

(1) **GASOLINE/GASOHOL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(2) **AVIATION GASOLINE.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(3) **RESIDUAL FUEL OIL (NUMBERS 5 AND 6).** There is no FET on residual fuel oil.

(4) **DIESEL FUEL.**

(i) **UNDYED DIESEL FUEL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(ii) **DYED DIESEL FUEL.** There is no FET on dyed diesel fuel.

(iii) **F76.** There is no FET on F76. F76 is excluded from the definition of diesel fuel under IRS Regulation 26 CFR Section 48.4081-1.

(iv) **JPTS, JP4 AND JET B.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice. (A Vessel of War exemption certificate will be provided to support sale of these fuels without tax to all military aircraft.)

(5) **KEROSENE FOR USE IN NONCOMMERCIAL AVIATION (JET FUEL).** Effective October 1, 2005, only the registered ultimate vendor may claim a refund for kerosene used in noncommercial aviation for use in military aircraft. An ultimate vendor is a person that sells kerosene to an ultimate purchaser for use in noncommercial aviation. The ultimate vendor is the Contractor; DLA Energy is the ultimate purchaser. Therefore, the Contractor shall not invoice FET. It shall only include the Leaking Underground Storage Tank (LUST) tax as part of the contract price for removal by truck or rail. The Contractor, as the ultimate vendor must apply for recovery of FET.

(b) **FEDERAL LEAKING UNDERGROUND STORAGE TANK (LUST) TAX INCLUDED.** Effective October 1, 2005, contract prices for all petroleum products including previously exempt (red dyed) diesel fuels INCLUDE the Federal Leaking Underground Storage Tank (LUST) tax. The LUST tax does not apply to F76, FSII, FOR, SLOP, Burner Oil Number 5, Burner Oil Number 6 and lubes.

(c) **STATE EXCISE TAXES EXCLUDED.** All contract prices EXCLUDE State excise taxes on fuels (including all bulk fuels, bunkers, and bulk lube products). Contractors should include any applicable State excise taxes (for which no exemption applies) as a separate item on the Contractor's invoice in accordance with the terms of this contract.

(d) **OTHER STATE TAXES INCLUDED.** Unless an exemption applies, all contract prices INCLUDE State taxes other than excise taxes.

(e) **LOCAL TAXES INCLUDED.** Unless an exemption applies, all contract prices INCLUDE local (city, county, etc.) taxes.

(f) **ENVIRONMENTAL AND OIL SPILL TAXES AND INSPECTION FEES INCLUDED.** Unless an exemption applies, all contract prices INCLUDE State and local environmental and oil spill taxes and inspection fees.

(g) **LICENSES.** Federal, State, and local licenses or other activities necessary to establish Contractor's entitlement to do business and/or to make tax-exempt sales under this contract are the Contractor's responsibility. Failure to obtain appropriate licenses or to follow required procedures shall preclude the reimbursement of taxes that would otherwise be exempt.

128.03-1 TAX EXEMPTION CERTIFICATES (DLA ENERGY AUG 2003)

(a) **FEDERAL AND STATE EXCISE TAXES.** Contractors shall forward requests for tax exemption certificates covering any Federal Excise Tax (FET) or State excise tax to the Contracting Officer or Ordering Officer.

(b) **STATE TAXES OTHER THAN EXCISE TAXES, LOCAL TAXES, AND ENVIRONMENTAL TAXES AND FEES.** Contractors shall forward requests for tax exemption certificates covering any State taxes other than excise taxes to the Contracting Officer or Ordering Officer. Examples of such taxes include local taxes, environmental taxes and inspection fees.

(c) **GOVERNMENT OPTION TO DEDUCT TAX AND FURNISH TAX EXEMPTION CERTIFICATES.** If this contract provides that the Contractor should invoice for FET, the supplies to be furnished at the time of contract execution are generally intended for a taxable purpose. However, where the invoice for any item includes FET and tax exemption can be claimed, the applicable tax may be deducted by the Government from the order or the invoice and a tax exemption certificate furnished in lieu of paying the tax. The Contracting Officer or Ordering Officer will issue these tax exemption certificates.

128.24 U.S. IMPORT TAX ON PETROLEUM (BULK) (DLA ENERGY NOV2011)

This contract provision is applicable to overseas f.o.b. origin contracts and to domestic f.o.b. origin contracts where product may be imported into the U.S. The contract prices for any foreign refined product to be furnished hereunder do not include any U.S. Import Tax or Duty on petroleum. In the event that such a tax or duty may be imposed on product furnished under this contract, the U.S. Government shall be responsible for paying or claiming exemption from such taxes or duties, as appropriate.

186.12 DELIVERY-ORDER LIMITATIONS - SCOPE OF CONTRACT (BULK) (DLA ENERGY NOV 2011)

(a) The Government agrees to purchase, during the period of this contract and in accordance with the terms of this contract, at least a quantity (or quantities) of product that, under the contract terms, will be not less than 75 percent of the total original estimated contract volume. The Government may satisfy this obligation by purchasing against any or all of the contract line items.

(b) Except as authorized by paragraphs (c) through (e) below, the maximum quantity the Government is allowed to purchase and the Contractor is authorized to furnish will not exceed the total quantity of each grade of fuel specified in Schedule B of the contract.

(c) If, under a single solicitation, contract line items are not all awarded at the same time, then, for purposes of this contract text, the above mentioned total original estimated contract volume shall be that of the contract after award has been made of all items.

(d) Notwithstanding the wording of the INDEFINITE QUANTITY contract text--

(1) On the final order placed for each product from each refinery source calling for delivery into or by means of tanker or barge, the Government shall be entitled to order, and if ordered, the Contractor shall be required to furnish the ordered quantity, which may be over what the Government would otherwise be entitled to order and is considered sufficient to fill out the vessel. On the final ordered placed by means of pipeline, the Government shall be entitled to order, and if ordered, the Contractor shall be required to furnish quantity sufficient to fulfill the maximum parcel size set by the applicable carrier or International agreement. However, in no event shall this additional quantity for tanker, barge or pipeline exceed their respective monthly quantities as defined in the contract unless agreed upon by the Contractor.

(2) The Contractor may, at its option, make deliveries subsequent to 30 days after the expiration of the ordering period, if requested by the Government.

(e) The scope of this contract does not include--

(1) Alteration to the specification that would require significant re-configuration of refinery design, or significant modification of current and planned refinery operations;

(2) Alteration in method of shipment that would result in significant disruption of current and planned refinery operations; and

(3) Alteration of the place of delivery, under f.o.b. origin contracts, that would require delivery from a refinery other than the one(s) specified in the Contractor's offer.

1186 PROTECTION OF GOVERNMENT PROPERTY AND SPILL PREVENTION (DLA ENERGY FEB 2009)

(a) The Contractor shall use reasonable care to avoid damaging or contaminating existing buildings, equipment, asphalt pavement, soil, or vegetation (such as trees, shrubs, and grass) on the Government installation. If the Contractor fails to use reasonable care or fail to comply with the requirements of this contract and damages or contaminates any such buildings, equipment, asphalt pavement, soil or vegetation, or other Government facilities, he shall replace the damaged items or repair the damage at no expense to the Government and to the satisfaction of the Government. Should the Contractor fail or refuse to make such repairs or replacements, the Government may have the said repairs or replacement accomplished, and the Contractor shall be liable for the cost thereof which may be deducted from the amounts which become due under this contract. Informal agreement with the Contractor upon replacement, repairs, or costs to be deducted shall first be attempted by the Installation Commander or Ordering Officer. If disagreement persists, the matter shall be referred to the Contracting Officer. Unless approved by the Contracting Officer, no costs shall be deducted from amounts due or owing without the Contractor's consent.

(b) The Contractor shall take all measures as required by law to prevent oil spills (including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping into or onto any land or water). In the event the Contractor spills any oil (including, but not limited to, gasoline, diesel fuel, fuel oil, or jet fuel), the Contractor shall be responsible for the containment, cleanup, and disposal of the oil spilled.

Should the Contractor fail or refuse to take the appropriate containment, cleanup, and disposal actions, the Government may do so itself. The Contractor shall reimburse the Government for all expenses incurred including fines levied by Federal, State, or local governments.

1190.04 SAFETY DATA SHEETS -- COMMERCIAL ITEMS (BULK) (DLA ENERGY JUL 2016)

(a) For each item to be delivered under this contract, the apparently successful offeror shall submit, prior to award, a Safety Data Sheet (SDS), NOT a Material Safety Data Sheet (MSDS), that meets the requirements of both 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313. All data on the SDS shall be current, accurate, complete, and in compliance with Federal Standard No. 313. The apparently successful offeror is responsible for satisfying this requirement whether or not it is the actual manufacturer of the item. Failure to submit an SDS for each item to be delivered prior to award may result in the apparently successful offeror being considered non-responsible and ineligible for award.

(b) All SDSs shall be submitted to the Contracting Officer. Each SDS must cite the solicitation or contract number, the

applicable Commercial and Government Entity (CAGE) code of the Contractor and the name of the manufacturer, and the National Stock Number (NSN).

(c) For current contracts, the apparently successful offeror need not submit an SDS for an item for which they have submitted an acceptable SDS to DLA Energy within the past four years. At minimum, a new SDS must be prepared, dated, and submitted every four years.

(d) If, at any time prior to or after award, there is either a change in the composition of the item(s) or a revision to Federal Standard No. 313 that renders incomplete or inaccurate the data submitted under paragraph (a) of this contract text, the apparently successful offeror or Contractor shall promptly notify the Contracting Officer and submit a new SDS that is complete and accurate within 30 days of said change or revision.

I209.09 EXTENSION PROVISIONS (DLA ENERGY JAN 2012)

(a) The Government shall have the right to extend this contract on the same terms and conditions one or more times for a total of no more than six months. Notice of contract extension will be furnished to the Contractor not later than 30 days prior to expiration of the contract ordering period or any extension thereof. Nothing in this contract provision precludes the Contractor from agreeing to an extension of the contract if the DLA Energy Contracting Officer fails to issue the notice prior to 30 days before the end of the ordering period.

(b) Extension of this contract shall be considered to have been accomplished at the time the DLA Energy Contracting Officer provides written notification to the Contractor.

SECTION J- LIST OF ATTACHMENTS

Attachment 1 - C & E QAPS

Attachment 2 – Offeror Submission Package

Attachment 3 – Fillable Clauses

SECTION K – REPRESENTATIONS, CERTIFICATIONS AND STATEMENTS

FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

(a) *Definitions.* As used in this provision-"Lobbying contact" has the meaning provided at [2 U.S.C. 1602\(8\)](#). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" ([52.203-12](#)) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by [31 U.S.C. 1352](#). Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

FAR 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021) (FULL TEXT IN ATTACHMENT 3)

FAR 52.204-26 COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION (OCT 2020)

(a) *Definitions.* As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c)

(1) *Representation.* The Offeror represents that it ☐ does, ☐ 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.

(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 any equipment, system, or service that uses covered telecommunications equipment or services.

FAR 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)

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

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

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

(1) The total value of all current, active contracts and grants, including all priced options; and

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

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror ☐ has ☐ does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

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

- (i) In a criminal proceeding, a conviction.
- (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
 - (iii) In an administrative proceeding, a finding of fault and liability that results in—
 - (A) The payment of a monetary fine or penalty of \$5,000 or more; or
 - (B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.
 - (iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.
- (2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.
 - (d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see [52.204-7](#)).

FAR 52.209-12 CERTIFICATION REGARDING TAX MATTERS (OCT 2020) (FULL TEXT IN ATTACHMENT 3)

FAR 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS- COMMERCIAL ITEMS (DEVIATION 2023-O0002)(FULL TEXT IN ATTACHMENT 3)

FAR 52.229-11 TAX ON CERTAIN FOREIGN PROCUREMENTS—NOTICE AND REPRESENTATION (JUN 2020) (FULL TEXT IN ATTACHMENT 3)

DFARS 252.203-7005 REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2022)

- (a) Definition. “Covered DoD official” is defined in the clause at 252.203-7000 , Requirements Relating to Compensation of Former DoD Officials.
- (b) By submission of this offer, the Offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the Offeror, and who are expected to undertake activities on behalf of the Offeror for any resulting contract, are presently in compliance with all applicable post-employment restrictions, including those contained in 18 U.S.C. 207, 41 U.S.C. 2101-2107, 5 CFR part 2641, section 1045 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), and Federal Acquisition Regulation 3.104-2.

(End of provision)

DFARS 252.204-7016 COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES— REPRESENTATION (DEC 2019) (FULL TEXT IN ATTACHMENT 3)

DFARS 252.204-7017 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES—REPRESENTATION (MAY 2021) (FULL TEXT IN ATTACHMENT 3)

DFARS 252.225-7973 PROHIBITION ON THE PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS— REPRESENTATION (MAY 2020) (DEVIATION 2020-O0015)

- (a) Prohibition. Section 848 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92) prohibits DoD from using or procuring—
 - (1) An unmanned aircraft system (UAS), or any related services or equipment, that—
 - (i) Is manufactured in the People’s Republic of China or by an entity domiciled in the People’s Republic of China;
 - (ii) Uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in the People’s Republic of China or by an entity domiciled in the People’s Republic of China;
 - (iii) Uses a ground control system or operating software developed in the People’s Republic of China or by an entity domiciled in the People’s Republic of China; or
 - (iv) Uses network connectivity or data storage located in, or administered by an entity domiciled in, the People’s Republic of China; or

(2) A system for the detection or identification of a UAS, or any related services or equipment, that is manufactured—

(i) In the People's Republic of China; or

(ii) By an entity domiciled in the People's Republic of China.

(b) Representations. By submission of its offer, the Offeror represents that it will not provide or use—

(1) A UAS, as described in paragraph (a)(1) of this provision, in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation; and

(2) A system for the detection or identification of a UAS, as described in paragraph (a)(2) of this provision, in the performance of any contract, subcontract, or other contractual instrument resulting from this solicitation.

(End of provision)

K1.01-7 OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS (CONT'D) (DLA ENERGY FEB 2009) (ATTACHMENT 2)

K1.01-12 SMALL BUSINESS PROGRAM NOTICE (DLA ENERGY JAN 2012) NOTICE.

(a) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the contract program in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(b) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

- (1) Be punished by imposition of a fine, imprisonment, or both;
- (2) Be subject to administrative remedies, including suspension and debarment; and
- (3) Be ineligible for participation in programs conducted under the authority of the Act.

K15.01 RELEASE OF UNIT PRICES (BULK) (DLA ENERGY NOV 2002)

(a) The Defense Logistics Agency Energy (DLA Energy) has routinely released the unit prices of successful and unsuccessful offerors to interested parties at the conclusion of the procurement. This information has been released in various formats, including abstracts of offers received, bid evaluation model reports, notices to unsuccessful offers, and other summary formats. Updated contract prices are also publicly posted on the DLA Energy website throughout the delivery period of some contracts. Offerors have not objected to DLA Energy's routine release or disclosure of these unit prices.

(b) DLA Energy will continue to release unit prices of successful offers after contract award pursuant to 10 U.S.C. 2305(g)(2), FAR 15.506(d)(2) and 32 CFR 286h-3.

(c) DLA Energy will continue to release unit prices of unsuccessful offers after contract award that are included in a Government document, such as the Bid Evaluation Model or other similar evaluation document, in accordance with DoD 5400.7-R (C5.2.8.2.).

K28 REFINERY INFORMATION (BULK) (DLA ENERGY JULY 2019) (ATTACHMENT 2)

K28.01 NOTIFICATION OF VESSEL EXPECTED TIME OF ARRIVAL (ETA) (DLA ENERGY JAN 2012) (REV) (ATTACHMENT 2)

K33.01 AUTHORIZED NEGOTIATORS (DLA ENERGY APR 2007) ATTACHMENT 2)

K86 FOREIGN TAXES (DLA ENERGY NOV 2014) (ATTACHMENT 2)

K150 WIDE AREA WORKFLOW (WAWF) SUPPLEMENTAL INVOICE SUBMISSION (DLA ENERGY MAY 2014)

(a) When a vendor becomes aware that an invoice was submitted for a price or quantity that is lower than the correct amount, the following needs to be done:

1. The vendor will go to WAWF and try to recall the invoice and do changes in price or quantity. If the vendor is unable to recall the invoice:
2. The vendor will submit via fax (Fuels EDM FAX Line: 614-701-2638 or DSN 791-2638/ Toll Free 855-234-5592) a manual invoice to the payment office, SL4701, which identifies the invoice as an adjustment with an invoice number that is a derivation of the original invoice number that was submitted and paid. (For example, if the original invoice number was 12345, then adjustment

invoice number shall be 12345ADJ).

3. The adjustment invoice should have the original price or quantity cited as well as the corrected price or quantity and the net adjustment,

4. All other proper invoice criteria, in accordance with the Prompt Payment Act, remain required for adjustment invoices.

5. The vendor can print the WAWF invoice and use it to make the adjustments as described above.

If a vendor has payment status questions, they may contact either DFAS-Customer Service at DFAS-CO_LC@DFAS.MIL or dial 1- 800-756-4571 option 2, or contact their DLA Energy Contracting Officer, to obtain contract information from their contract.

Note: The aforementioned email address contains an **underscore** “_” between the “CO” and “LC”.

SECTION L - INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

FAR 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

Federal Acquisition Regulation

(FAR): [https://www.ecfr.gov/cgi-bin/text-](https://www.ecfr.gov/cgi-bin/text-idx?SID=09133e44280d3d3f07553a99b0a1200d&mc=true&tpl=/ecfrbrowse/Title48/48tab_02.tpl)

[idx?SID=09133e44280d3d3f07553a99b0a1200d&mc=true&tpl=/ecfrbrowse/Title48/48tab_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?SID=09133e44280d3d3f07553a99b0a1200d&mc=true&tpl=/ecfrbrowse/Title48/48tab_02.tpl)

Department of Defense Federal Acquisition Regulation Supplement

(DFARS): <https://www.acq.osd.mil/DPAP/dars/dfarspgi/current/index.html>

Defense Logistics Agency Directive

(DLAD): <https://www.dla.mil/HQ/Acquisition/Offers/DLAD.aspx>

FAR 52.212-1 INSTRUCTIONS TO OFFERORS – COMMERCIAL ITEMS (NOV 2021)

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code(s) and small business size standard(s) for this acquisition appear elsewhere in the solicitation. However, the small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce is 500 employees if the acquisition—

- (1) Is set aside for small business and has a value above the simplified acquisition threshold;
- (2) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or
- (3) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at Federal Acquisition Regulation (FAR) 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

- (c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.
- (d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.
- (e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with FAR subpart 4.10), or alternative commercial products or commercial services for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.
- (f) Late submissions, modifications, revisions, and withdrawals of offers.
 - (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.
 - (2) (i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-
 - (A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
 - (B) If this solicitation is a request for proposals, it was the only proposal received.
 - (ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
- (3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
- (4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
- (5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.
- (g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.
- (h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.
- (i) Availability of requirements documents cited in the solicitation.
 - (1) (i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to- GSA Federal Supply Service Specifications Section Suite 8100 470 East L'Enfant Plaza, SW Washington, DC 20407 Telephone (202) 619-8925 Facsimile (202) 619-8978.(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.
 - (2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

- (i) ASSIST (<https://assist.dla.mil/online/start/>).
 - (ii) Quick Search (<http://quicksearch.dla.mil/>).
- (3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by-
- (i) Using the ASSIST Shopping Wizard (<https://assist.dla.mil/wizard/index.cfm>);
 - (ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or
 - (iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111- 5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.
- (4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.
- (j) Unique entity identifier.(Applies to all offers that exceed the micro-purchase threshold, and offers at or below the micro-purchase threshold if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see FAR subpart 32.11) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at www.sam.gov for establishing the unique entity identifier.
- (k) [Reserved]
- (l) Debriefing. If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:
- (1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
 - (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
 - (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
 - (4) A summary of the rationale for award;
 - (5) For acquisitions of commercial products, the make and model of the product to be delivered by the successful offeror.
 - (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source- selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

ADDENDA TO FAR 52.212-1

(a) *North American Industry Classification System (NAICS) code and small business size standard.* In addition to the above, for NAICS code 324110 – To qualify as small for purposes of Government procurement, the petroleum refiner, including its affiliates, must be a concern that has either no more than 1,500 employees or no more than 200,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes all domestic and foreign affiliates, all owned or leased facilities, and all facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. To qualify under the capacity size standard, the firm, together with its affiliates, must be primarily engaged in refining crude petroleum into refined petroleum products. A firm's "primary industry" is determined in accordance with 13 CFR § 121.107.

(b) *Submission of offers.* The following is hereby added:

(12) All price, quantity, delivery, and transportation terms as specified in the Offer Entry Tool and Offeror Submission Package.
Period of Acceptance. Period of Acceptance shall be changed to 270 days.

(c) *Contract award.* The following is hereby added: The Government may evaluate offers and award a contract after conducting discussions with offerors whose offers have been determined to be within the competitive range. If the Contracting Officer determines that the number of offers that would otherwise be in the competitive range exceeds the number at which an efficient competition can be

conducted, the Contracting Officer may limit the number of offers in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offers. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

(End of provision)

FAR 52.216-1 TYPE OF CONTRACT (APR 1984) FAR

The Government contemplates award of a Fixed price with Economic Price Adjustment contract resulting from this solicitation.

FAR 52.222-56 CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE PLAN (OCT 2020)

(a) The term "commercially available off-the-shelf (COTS) item," is defined in the clause of this solicitation entitled "Combating Trafficking in Persons" (FAR clause 52.222-50).

(b) The apparent successful Offeror shall submit, prior to award, a certification, as specified in paragraph (c) of this provision, for the portion (if any) of the contract that-

(1) Is for supplies, other than commercially available off-the-shelf items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds \$550,000.

(c) The certification shall state that-

(1) It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons, and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons; and

(2) After having conducted due diligence, either-

(i) To the best of the Offeror's knowledge and belief, neither it nor any of its proposed agents, subcontractors, or their agents is engaged in any such activities; or

(ii) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the Offeror or proposed subcontractor has taken the appropriate remedial and referral actions.

(End of provision)

L2.09 EVIDENCE OF RESPONSIBILITY (OPERATING CRITERIA) (DLA ENERGY FEB 2018)

(a) To be determined responsible, an offeror may be required to designate, as a source of supply for performance under any resulting contract, a refinery that is operating at the time the offeror submits its Interim Proposal Revision. An operating refinery is a refinery that is producing petroleum products. For purposes of this contract provision, a petroleum product is a fuel used to operate motor vehicles, ships or aircraft.

(b) The evidence of responsibility required by this provision is in addition to the responsibility criteria set forth in FAR 9.104.

L54 SITE VISIT (DLA ENERGY OCT 1992)

(a) It is the responsibility of the offerors/bidders to inspect the site where supplies are to be delivered and to obtain all available information about the site necessary to satisfy themselves about general and local conditions that may affect delivery and the cost of contract performance, to the extent that the information is reasonably obtainable. Offerors/bidders are responsible for any costs incurred for any site inspection and for obtaining information.

(b) In no event shall failure to inspect the site constitute grounds for a claim after contract award

L704 EVIDENCE OF RESPONSIBILITY (DLA ENERGY- BULK) (JULY 2019)

(a) Any offeror not performing a significant portion of the contract with its own facilities and personnel may be determined by the Contracting Officer to be non-responsible.

(b) If the offeror's source of supply is a firm or refinery independent of the offeror, the offeror may be required to submit evidence of a supply commitment from such source(s) when submitting its offer under this solicitation. Evidence of supply commitments should extend to

the subcontracting level at which the product is produced.

(c) Such evidence may be in the form of a signed copy of the contract between the offeror and its supplier or in the form of a contingency letter from the supplier or other satisfactory documentation. In any event, such evidence of agreement should clearly identify--

- (1) The volumes to be supplied;
- (2) The specification(s) of product(s) to be supplied;
- (3) The points of delivery and period of contract performance;
- (4) The escalation provision(s) applicable to products to be supplied; and
- (5) The supplier's delivery and inspection terms and conditions.

(d) If the offeror changes its source of supply, such change must be made no later than the time specified for the submission of Interim Proposal Revisions. If required, a notice of a change in the offeror's source of supply should include the documentation set forth in (c) above.

(e) Failure to comply with the above provisions may result in a determination of non responsibility by the Contracting Officer.

SECTION M - EVALUATION FACTORS FOR AWARD

FAR 52.212-2 EVALUATION -- COMMERCIAL ITEMS (OCT 2014)

- (a) The Government will award one or more contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

FACTOR 1: TECHNICAL ACCEPTABILITY

(The following subfactors will be used in determining technical acceptability):

(1) Supplies or services and prices/cost, Section B:

- (i) Offer meets all schedule requirements in Section B
- (ii) Offered line items meet the delivery requirements of the schedule for additives required
- (iii) Offered line items meet the delivery requirements of the schedule for mode and FOB point
- (iv) Offer line item meets the required minimum and maximum quantity of the schedule

(2) Description/specifications/statement of work, Section C:

- (i) Offer meets all specification requirements outlined in Section C provisions
- (ii) For F76 offers, offer includes a completed and signed Traceability form for F76 fuel offers IAW Provision C16.23 FUEL, NAVAL DISTILLATE (DLA ENERGY April 2020).

(3) Inspection and Acceptance, Section E:

- (i) Offer meets all inspection requirements outlined in Section E Provisions.
- (ii) Offeror demonstrates an understanding of the quality assurance requirements in Quality Assurance Provisions (QAP) E1 and/or E1.21 of the solicitation by:

1) Certifying that it has a QCP, applicable to a DLA Energy bulk petroleum contract, on file with DLA Energy that is no more than 24 months old, by making this selection in Section J of its Offeror Submission Package (OSP); or

2) Providing an outline, estimated two pages in length, of an example QCP describing the offeror's current inspection system and quality assurance procedures, with references to the corresponding requirements in provisions E1, and making the corresponding selection in Section J of its OSP.

(4) Deliveries or performance, Section F:

- (i) Offer meets all requirements outlined in Section F provisions
- (ii) Offer includes completed information under Sources of Supply (monthly product capacity for each source of supply and shipping points supplied by each refinery/source of supply) for all products and shipping points.
- (iii) Offer includes completed information under Parcel Shipping Sizes and Daily Capacity for all products, modes and shipping points offered
- (iv) Offer includes completed information under Tanker and Barge Loading Facility Data (if offering via Origin Barge/Tanker mode), including but not limited to map coordinates for shipping points in the proper format as specified in the Solicitation Notes, item 2, and the Map Coordinate Desk Guide, attached to the solicitation
- (v) Offer includes completed information under Port Restrictions (if offering via Origin Barge/Tanker mode)

Subfactors 1-4 will be rated either "Acceptable" or "Unacceptable." These ratings are defined as follows:

ACCEPTABLE: The offeror's proposal conforms to the Government's supply and schedule requirements in Section B, product specifications in Section C, product quality assurance in Section E, and delivery/transportation requirements in Section F.

UNACCEPTABLE: The offeror's proposal does not conform to any one or more of the following requirements: the Government's supply and schedule requirements in Section B, product specifications in Section C, product quality assurance in Section E, and delivery/transportation requirements in Section F.

FACTOR 2: PRICE

Fixed Price with Economic Price Adjustment (EPA) contracts will result from this solicitation. The Contracting Team will evaluate proposals for pricing purposes in accordance with FAR 52.212-2 – EVALUATION – COMMERCIAL ITEMS. Offerors are advised that DLA Energy intends to execute the extension provision of any subsequent contract only if there are remaining quantities left on the contract; no quantities will be added. The extension provision will only extend the ordering and delivery period of the contract. In addition, the extension provisions contained in contract provision I209.09 EXTENSION PROVISIONS (DLA ENERGY JAN 2012) will be evaluated in conjunction with the evaluation of initial offers received.

The lowest price is defined as the lowest laid-down price, to include transportation costs. **Offers will be submitted through Attachment 2 – Offer Submission Package.**

A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

M4.01 RIGHT TO APPLY F.O.B. ORIGIN OFFER (DLA ENERGY JAN 1976)

The Government reserves the right to apply an f.o.b. origin offer against any destination item for the same product.

M10 EVALUATION - ALL OR NONE (DLA ENERGY JAN 2019)

(a) Definitions. As used in this text "All or None Offer" means a conditional offer of item(s) that are "tied" to other offered items. For example, an offeror may submit a proposal stating "If awarded Item 0020, Items 0019 and 0021 must also be awarded."

(b) Evaluation of All or None Offers.

(1) Offers submitted on an "All or None" basis will be evaluated in the aggregate via the Bid Evaluation Model (BEM) in accordance with DLA Energy tailored clause FAR 52.212-2 EVALUATION-COMMERICAL ITEMS; the award for those items "tied" together will be made at the lowest overall cost to the Government, price and other factors considered.

(2) Offerors may specify a minimum quantity for award; award will be made at the lowest overall cost to the Government, price and other factors considered.

(3) Offerors may not tie different products together. For example, JP5 offers may not be tied together with JAA offers. Such offers will be rejected as unacceptable.

(4) Offerors may not tie together the product or quantity from one refinery with the product or quantity from a separate refinery, nor include an overall minimum quantity for award that ties together the products or quantities of separate refineries. Such offers will be rejected as unacceptable. M19.05 EVALUATION OF OFFERS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (DOMESTIC BULK) (DLA ENERGY JAN 2012)

(a) Offer prices received by DLA Energy effective at the date and time set for Final Revised Proposals will be used for evaluation of offers. FOR EVALUATION PURPOSES ONLY, these offered prices will not be adjusted to reflect any increase or decrease that may occur under the provisions of the ECONOMIC PRICE ADJUSTMENT (EPA) contract provision(s).

(b) Offered prices will be subject to all terms and conditions of the EPA /contract provision(s).

(c) For all products, the award document will contain one price for each item. This price will be identified as the **base unit price**. The **base unit price** is the Final Revised price which is subject to adjustment when the ADJUSTING MARKET PRICE becomes available.

M3.03 EVALUATION OF OFFERS WHERE ALTERNATE ESCALATORS ARE USED (BULK) (DLA ENERGY JUN 2021)

(a) FOR EVALUATION PURPOSES ONLY, an evaluation factor will be applied to offer prices based on alternate escalators in order to account for the difference in volatility between alternate escalators and DLA Energy's default escalator. Any escalators approved for use other than the default escalator are known as alternate escalators. Applying the evaluation factor to offer prices based on alternate escalators allows for evaluation of offers based on the relationship between the alternate escalator and the default escalator over a 12-month period. Offers based on the default escalator are not subject to an evaluation factor.

(b) The evaluation factor is calculated by finding the difference between each escalator's price on the base reference date and that escalator's 12-month average. The difference between the alternate escalator's base reference price and its 12-month average is subtracted from the difference between the default escalator's base reference price and its 12-month average to calculate the evaluation factor for the alternate escalator. That value, which can be positive or negative, is the evaluation factor and is added to offer prices tied to the corresponding alternate escalator for purposes of determining the total laid down offer price for evaluation (see FAR 52.212-2 EVALUATION – COMMERCIAL ITEMS).

(c) For the purposes of section (b) above, each escalator's 12-month averages are calculated by averaging the respective reference prices (as per the ECONOMIC PRICE ADJUSTMENT contract text) for each day during the full 12 months prior to the Base Reference Price (BRP) date (e.g., if the BRP date is February 16, 2021, the prior 12-month period is February 2020 - January 2021).

Example Evaluation Factor Formula, pricing in US Dollars / US Gallons (USD/USG):

Ref Price (11/1/22)	Platts Jet Kero 54 USGC Pipeline Prior Week Average #PJABO00	Argus Jet Fuel Group 3 Magellan Pipeline Daily
Base Reference Price	\$3.452660	\$3.771100
12-month average	\$3.148874	\$3.355399
Difference	\$0.303786	\$0.415701
Evaluation factor		\$-0.111916

M24 EVALUATION OF OFFERS INVOLVING F.O.B. TANKER LOADING (ALL PROGRAMS) (DLA ENERGY OCT 2020)

- (a) Transportation will be considered in the evaluation of all origin offers unless the solicitation specifically indicates otherwise in the Schedule. The transportation rate will be based on a nominal size U.S. flag tanker of approximately _____ Deadweight Tons (DWTs). The transportation rate will be an estimated market rate based on either market information or published prices, or actual rates paid by the Government or any combination thereof. This evaluation rate will be expressed as a daily rate for U.S. flag costs. DLA Energy will use the evaluation rate along with one way mileage over the tanker routes being evaluated to compute a transportation rate expressed in U.S. cents per gallon. This rate will then be added to the per gallon offered price to determine the evaluated price.
- (1) For this solicitation, the rate to be used in the evaluation is \$111,249.02 per day. This rate reflects the lowest available freight rates and related accessorial and incidental charges that are reasonably anticipated to be in effect on or before the date of initial shipment. The contracting officer may update the rate to be used in the evaluation if, after the initial deadline for submission of offers, new rates or related charges become available that were not accounted for in the original evaluation rate provided above.
- (b) F.O.B. Tanker Origin offers of two product loads will be evaluated individually as one product loads.
- (c) Transportation freight rates will be applied to all offers in the evaluation process as follows:
- (1) The following procedures will be followed in applying transportation freight rates to offers in the evaluation process:
- (i) 235,000 _____ barrels of product will be considered sufficient to fully utilize vessels _____ DWTs and over.
- (ii) In the event an offeror limits its offer to individual tanker lifting of less than 235,000 _____ barrels, the offer will be evaluated on the basis of:
- a) a single-port load plus shifting charges if it is determined that the same product will be available in the same port area,
- b) the least expensive two-port loading rate if it is determined that the same products will not be available in the same port area but will be available in another port area in the same geographical area under this solicitation, or
- c) total vessel freight rate prorated over the maximum parcel size offered if there are no other products offered for tanker loading in the same geographical area. The additional costs represented by the shifting charge or the two-port loading will be assessed for evaluation purposes against such offer on a prorated basis per gallon on the quantity indicated by the offeror as the maximum lifting.
- (2) Upon completion of the initial evaluation, if any portion of the product(s) utilized to fill the vessel fails to evaluate as the lowest laid down cost, the product(s) will be eliminated and new transportation freight rates applied based on the successful portion of the product(s).
- (d) EXCEPTIONS:
- (1) Due to draft limitations or delivery restrictions, the following destinations cannot receive fully loaded vessels larger than 48,900 _____ DWTs. Offers for these destinations will be evaluated on a two-port discharge or restricted parcel size:

JAA
DFSP PEARL HARBOR TANKER – Max Parcel 110,000 BBLs

M27 EVALUATION OF OFFERS (DOMESTIC BULK) (DLA ENERGY JAN 2012)

- (a) Offerors are requested to offer on all or any part of the products listed herein, and on the methods of delivery that the offeror's facilities will permit. The Armed Services prefer to use Government- owned railroad tank cars and/or to arrange for transport trucks for delivery to using activities (destinations) from origin, whether it be refinery, terminal, or bulk plant, unless the destination price offer is lower than the origin price plus commercial or negotiated Government rates. Even though offers are made on a destination basis, offers covering delivery on an origin basis at Contractor's refinery, terminal, and/or bulk plant are requested and should be included in the spaces provided. The Government reserves the right to award, as the interest of the Government may require, on the basis of origin delivery at refinery, terminal, and/or bulk plant or on the basis of destination delivery.
- (b) When requirements are indicated as Alternate Delivery in the Schedule, evaluation will be made on the cost of delivery direct from offeror's refinery, terminal, or bulk plant and alternately on the cost of bulk water or pipeline liftings for refineries, transportation to the Government controlled terminals indicated, and transportation from the terminal to using activity. Awards will be made in whole or part on either basis, but not on both.
- (c) The DELIVERY AND CONTRACT PERIODS contract provision contains provisions applicable to offers for deliveries over the full contract period. Notwithstanding said provisions, offers that restrict delivery of supplies hereunder to any particular time or times during said period will be considered for award if advantageous to the Government.
- (d) Discounts for prompt payments will not be considered in the evaluation of offers.

M33 QUANTITIES TO BE EVALUATED FOR TANKER AND BARGE OFFERS (DLA ENERGY JUN 2022)

- (a) DLA Energy will add five days to offered tanker lift intervals and three days to offered barge or shallow draft tanker lift intervals to determine if the maximum total quantity offered for each offered item can be lifted under a resultant contract. These evaluation factors were derived from operational scheduling realities and will only be used for evaluation purposes. If the application of this contract text results in the evaluation of less than the maximum total quantity offered for that item, then the Government will not award more than the evaluated quantity. However, offerors should consider the Government's evaluation factors for tanker, shallow draft tanker, and barge lift intervals to assure lift intervals and parcel sizes provide for full evaluation of maximum total offered quantity for all items by all modes of delivery.
- (b) Unless defined otherwise by the offeror, lift interval is the time between the completion of loading (release of vessel by the Government inspector) until the scheduled delivery date of the next lifting for a specific product.
- (c) For offers on an FOB destination basis, the additional days added in section (a) are not applicable.

M41.04 EVALUATION OF OFFERS INVOLVING OTHER THAN F.O.B. TANKER (BULK) (DLA ENERGY JUL 2010)

- (a) Transportation rates and related costs shall be used in the evaluation of f.o.b. origin bids and proposals for all methods of delivery other than ocean-going tanker. The best available transportation rates and related costs in effect on or to become effective prior to the expected date of initial shipment, and on file or published at the date of the bid opening or initial proposal due date, shall be used in the evaluation. However, when transportation rates and related costs that cover the traffic are filed or published after the bid opening or initial proposal due date and there were no applicable rates or costs in existence on that date, these rates and costs shall be used in the evaluation.
- (b) In addition to the requirements of paragraph (a), truck rates will be selected for evaluation purposes according to the following hierarchy:
 - (1) In accordance with existing Government transportation contracts;
 - (2) The lowest published point-to-point, zone-to-zone, or state-to-state tender;
 - (3) Published state-to-region or region-to-state rates;
 - (4) Published region-to-region rates;
 - (5) Published region-to-9C or 9C-to-region rates;
 - (6) Quotation rates (rates from carriers participating in Powertrack will take precedence over those of non-Powertrack carriers);
 - (7) Published CONUS-wide rates, also known as 9C-to-9C rates or mileage rates.
- (c) If the offeror desires to guarantee a rate other than that covered in (a) and (b) above, such rate shall be considered in the evaluation of offers and shall become a part of any resultant contract. When Government property is to be furnished and shipped by the Government under a contract to a point specified by the prospective supplier in its bid or proposal, transportation costs shall be a cost factor in the evaluation of bids or proposals.

M72.10 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (BULK) (DLA ENERGY SEP 2020)

- (a) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation.

- (b) Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that either—
- (1) The exception/deviation is material enough to warrant rejection of the offer in part or in full;
 - or
 - (2) The exception/deviation is acceptable.
- (c) If the exception/deviation is in reference to a specification contained in this solicitation and the offeror cannot supply product fully meeting the required specification(s), the product can be offered for consideration provided the offeror clearly indicates in Section M of its Offer Submission Package (OSP) the extent to which any product offered differs from the required specification(s).
- (d) If the exception/deviation is in reference to a particular test, inspection, or testing method contained in this solicitation, the offer can be considered provided the offeror clearly indicates in Section M of the OSP the extent to which its offer differs from those requirements.
- (e) If the exception/deviation is in reference to any aspect of the solicitation not covered by subsections (c) or (d) of this provision, the offer can be considered provided the offeror clearly indicates in Section M of the OSP the extent to which its offer differs from the solicitation.
- (f) If the character limitation in Section M of Attachment 2 prevents the offeror from clearly detailing its exceptions, the offeror may include one attachment not to exceed two pages in length labeled “Section M - Exception Requests” where it consolidates and details all exceptions to the solicitation. If such an attachment is used, the offeror must clearly state in Section M of its OSP that the exceptions are in the properly labeled attachment.
- (g) Any exception/deviation to the solicitation that is not in Section M of the OSP or in an attachment compliant with subsection (f) of this provision will not be considered and will be rejected, regardless of whether the exception/deviation is explicitly labeled as an exception or a deviation. Any exception/deviation to the solicitation shall be considered rejected unless the Government explicitly accepts the exception/deviation in writing during negotiations.
- (h) If the exception/deviation is determined acceptable, offered prices may be adjusted, for evaluation purposes only, by the Government's best estimate of the quantitative impact of the advantage or disadvantage to the Government that might result from making an award under those circumstances.

M74 USE OF DESP BY COMMERCIAL SUPPLIER OFFERING PRODUCT UNDER DLA ENERGY SOLICITATIONS (DLA ENERGY AUG 1983)

DLA Energy reserves the right to accept or reject offers that require movement of product through a Defense Energy Support Point to effect tanker loading. Rejection may be based on economics, detrimental logistical impact on the Government, or other good cause.

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