

Please note that no documents have been reviewed for release, all documents must be reviewed prior to their release.

FOIA Request Form

FOIA ID# 1372136-0

Any additional ID info: Datamnr

Request is asking for: Contract for use of Datamnr's Advanced Alerting Tool and support services for the tool, legal analysis, privacy assessments. We do not have training materials, manuals, or presentations.

Assigned to

b6
b7C

GS level:

Total amount of time used to locate responsive documents:

_1_hrs _0_mins

Total number of responsive documents (page # or measurement): 60 pages

POC/COR/SME:

b6
b7C

Any additional comments:

Please note that no documents have been reviewed for release, all documents must be reviewed prior to their release.

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24 & 30				1. REQUISITION NUMBER DJF-17-1300-PR-0000555	
2. CONTRACT NO. DJF-17-1200-P-0002894		3. AWARD/EFFECTIVE DATE 01/31/2017		4. ORDER NUMBER	
7. FOR SOLICITATION INFORMATION CALL:		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE	
		b. TELEPHONE NUMBER (No collect calls)		8. OFFER DUE DATE / LOCAL TIME	
9. ISSUED BY FEDERAL BUREAU OF INVESTIGATION TECHNOLOGY SUPPORT CONTRACTS UNIT 935 PENNSYLVANIA AVE, NW WASHINGTON, DC 20535-0001		CODE UNIT CHIEF		10. THE ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR	
		<input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBBLOT SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS		<input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB <input type="checkbox"/> BIAV NAICS: 541511 SIZE STANDARD: \$25,000,000	
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS NET 30		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>	
				13b. RATING	
15. DELIVER TO SEE SCHEDULE		CODE		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
				15. ADMINISTERED BY CODE	
17a. CONTRACTOR/OFFEROR DATAMINR, INC. 6 E 32ND ST FL 2 NEW YORK, NY 10016-5422 DUNS: 962138942 TELEPHONE NO		CODE 010928154 FACILITY CODE 962138942		18a. PAYMENT WILL BE MADE BY CODE 1200 SUBMIT ALL INVOICES VIA EMAIL TO CENTRAL_INVOICES@IC.FBI.GOV	
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	DATAMINR - ADVANCED ALERTING TOOL. (REF: Dataminr Quote (REV1) dated 10 JAN 2017, Amended Service License Agreement (SLA) dated 17 JAN 2017, and Dataminr Enterprise Sharing Addendum dated 27 JAN 2017) See Continuation Sheet(s) (Use Reverse side or Attach Additional Sheet as Necessary)				
25. ACCOUNTING AND APPROPRIATION DATA FBI-2017-SEN1-1300-1300-ON-YX-25102-TERR-2017				26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$1,499,375.00	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-6 ARE ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-6 IS ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input checked="" type="checkbox"/> ARE NOT ATTACHED	
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED				<input type="checkbox"/> 29. AWARD OF CONTRACT, REF. OFFER DATED YOUR OFFER ON SOLICITATION (BLOCK 6) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS.	
30a. SIGNATURE OF OFFEROR/CONTRACTOR			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)		
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)			31b. NAME OF THE CONTRACTING OFFICER (TYPE OR PRINT)		
30c. DATE SIGNED			31c. DATE SIGNED 01/31/2017		

19. ITEM NO	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE			32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
			32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL				
38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY		
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY (Print)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		42b. RECEIVED AT (Location)		
		42c. DATE REC'D (YY/MM/DD)		
		42d. TOTAL CONTAINERS		

STANDARD FORM 1449 (REV. 02/2012) BACK

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Section 2 - Commodity or Services Schedule

SCHEDULE OF SUPPLIES/SERVICES

CONTINUATION SHEET

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	DATAMINR - BASE YEAR FUNDING (ADVANCED ALERTING TOOL) Line Period of Performance: 02/08/2017 - 12/16/2017 Base Period Delivery Schedule: Quantity: <input type="text"/> FOB: Delivery Address: COUNTERTERRORISM DIVISION ATTN: <input type="text"/> RM <input type="text"/> 2400 SCHUSTER DRIVE CHEVERLY, MD 20781-0001				\$1,499,375.00
Base Total:					
Exercised Options Total:					
Unexercised Options Total:					
Base and Options Total:					\$1,499,375.00

b4
b6
b7C
b7E

FUNDING DETAILS:

ITEM NO	FUNDING LINE	OBLIGATED AMOUNT	ACCOUNTING CODES
0001			2017 - SEN1 - 1300 - 1300 - ON - - - 25102 - - - - -
		TOTAL \$1,499,375.00	

b4
b7E

Section 3 - Contract Clauses

Clauses By Reference

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 this/these address(es): www.acquisition.gov

Clause	Title
52.246-11	Higher-Level Contract Quality Requirement (Dec 2014)
52.202-1	Definitions (Nov 2013)
52.203-3	Gratuities (Apr 1984)
52.203-5	Covenant Against Contingent Fees (May 2014)
52.203-6	Restrictions On Subcontractor Sales To The Government (Sept 2006)
52.203-6 Alt I	Restrictions On Subcontractor Sales To The Government (Sept 2006) - Alternate I (Oct 1995)
52.203-7	Anti-Kickback Procedures (May 2014)
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (May 2014)
52.203-12	Limitation On Payments To Influence Certain Federal Transactions (Oct 2010)
52.204-2	Security Requirements (Aug 1996)
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015)
52.208-9	Contractor Use of Mandatory Sources of Supply or Services (May 2014)
52.214-29	Order of Precedence - Sealed Bidding (Jan 1986)
52.215-2	Audit and Records - Negotiation (Oct 2010)
52.215-2 Alt III	Audit and Records - Negotiation (Oct 2010) - Alternate III (June 1999)
52.215-8	Order of Precedence - Uniform Contract Format (Oct 1997)
52.215-14	Integrity of Unit Prices (Oct 2010)
52.215-14 Alt I	Integrity of Unit Prices (Oct 2010) - Alternate I (Oct 1997)
52.215-23	Limitations on Pass-Through Charges (Jan 2011)
52.215-23 Alt I	Limitations on Pass-Through Charges (Oct 2009) - Alternate I (Oct 2009)
52.222-1	Notice to the Government of Labor Disputes (Feb 1997)

Clause	Title
52.222-21	Prohibition of Segregated Facilities (Apr 2015)
52.222-26	Equal Opportunity (Apr 2015)
52.222-26 Alt 1	Equal Opportunity (Apr 2015) - Alternate I (Feb 1999)
52.222-29	Notification of Visa Denial (Apr 2015)
52.222-50	Combating Trafficking in Persons (Mar 2015)
52.223-16	Encouraging Contractor Policies To Ban Text Messaging While Driving (Aug 2011)
52.225-13	Restrictions on Certain Foreign Purchases (June 2008)
52.226-4	Workers' Compensation and War-Hazard Insurance Overseas (Apr 1984)
52.229-6	Taxes - Foreign Fixed-Price Contracts (Feb 2013)
52.230-4	Disclosure and Consistency of Cost Accounting Practices--Foreign Concerns (Oct 2015)
52.230-6	Administration of Cost Accounting Standards (June 2010)
52.232-17	Interest (May 2014)
52.232-23	Assignment of Claims (May 2014)
52.232-23 Alt 1	Assignment of Claims (May 2014) - Alternate I (Apr 1984)
52.232-24	Prohibition of Assignment of Claims (May 2014)
52.232-25	Prompt Payment (Jul 2013)
52.232-30	Installment Payments for Commercial Items (Oct 1995)
52.232-39	Unenforceability of Unauthorized Obligations (Jun 2013)
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)
52.233-1	Disputes (May 2014)
52.233-1 Alt 1	Disputes (May 2014) - Alternate I (Dec 1991)
52.233-3	Protest after Award (Aug 1996)
52.233-4	Applicable Law for Breach of Contract Claim (Oct 2004)
52.242-13	Bankruptcy (July 1995)
52.244-2	Subcontracts (Oct 2010)
52.244-5	Competition in Subcontracting (Dec 1995)
52.244-6	Subcontracts for Commercial Items (Nov 2015)
52.246-23	Limitation of Liability (Feb 1997)
52.247-58	Report of Shipment (RESHIP) (Feb 2005)
52.249-2	Termination for Convenience of the Government (Fixed-Price) (Apr 2012)
52.253-1	Computer Generated Forms (Jan 1991)

Clauses By Full Text

DJAR-PGD-02-02A Non-U.S. Citizens Prohibited from Access to DOJ Information Technology (IT) Systems

The Department of Justice does not permit the use of Non-U.S. citizens in the performance of this contract or commitment for any position that involves access to or development of any DOJ IT system. By signing the contract or commitment document, the contractor agrees to this restriction. [In those instances where other non-IT requirements contained in the contract or commitment can be met by using Non-U.S. citizens, those requirements shall be clearly described.].

(End of Clause)

DJAR-PGD-02-02B Non-U.S. Citizens Prohibited from Access to DOJ Information Technology (IT) Systems

The Department of Justice (DOJ) will no longer permit the use of Non-U.S. citizens in the performance of this contract or commitment for any position that involves access to or development of any DOJ IT system. By signing the contract or commitment document, the contractor agrees to this restriction with respect to all new employees utilized directly to perform duties on the contract. Non-U.S. citizens currently employees under this contract or commitment may continue performance unless otherwise directed by the Department of Justice. No new, replacement, or additional Non-U.S. citizens may be added to the contract without the express approval of the Department of Justice. [In those instances where other non-IT requirements contained in the contract or commitment can be met by using Non-U.S. citizens, those requirements shall be clearly described.].

(End of Clause)

DJAR-PGD-05-08 Implementation of Homeland Security Presidential Directive (HSPD) 12 - Policy for a Common Identification Standard for Federal Employees and Contractor

NOTICE OF CONTRACTOR PERSONNEL SECURITY REQUIREMENTS

Compliance with Homeland Security Presidential Directive-12 (HSPD-12) and Federal Information Processing Standard Publication 201 (FIPS 201) entitled "Personal Identification Verification (PIV) for Federal Employees and Contractors," Phase I.

1. Long-Term Contractor Personnel:

In order to be compliant with HSPD-12/PIV I, the following investigative requirements must be met for each new long-term2 contractor employee whose background investigation (BI) process begins on or after October 27, 2005:

- a. Contractor Personnel must present two forms of identification in original form prior to badge issuance (acceptable documents are listed in Form 1-9, OMB No. 1615-0047, "Employment Eligibility Verification," and at least one document must be a valid State or Federal government-issued picture ID);
- b. Contractor Personnel must appear in person at least once before a DOJ official who is responsible for checking the identification documents. This identity proofing must be completed sometime during the clearance process but prior to badge issuance and must be documented by the DOJ official;
- c. Contractor Personnel must undergo a BI commensurate with the designated risk level associated with the duties of each position. Outlined below are the minimum BI requirements for each risk level:

- High Risk - Background Investigation (5 year scope)
- Moderate Risk - Limited Background Investigation (LBI) or Minimum Background Investigation (MBI)
- Low Risk - National Agency Check with Inquiries (NACI) investigation

d. The pre-appointment BI waiver requirements for all position sensitivity levels are a:

- 1) Favorable review of the security questionnaire form;
- 2) Favorable fingerprint results;
- 3) Favorable credit report, if required;3
- 4) Waiver request memorandum, including both the Office of Personnel Management schedule date and position sensitivity/risk level; and 5) Favorable review of the National Agency Check (NAC)4 portion of the applicable BI that is determined by position sensitivity/risk level.

A badge may be issued following approval of the above waiver requirements.

If the NAC is not received within five days of OPM's scheduling date, the badge can be issued based on a favorable review of the Security Questionnaire and the Federal Bureau of Investigation Criminal History Check (i.e., fingerprint check results).

e. Badge re-validation will occur once the investigation is completed and favorably adjudicated. If the BI results so justify, badges issued under these procedures will be suspended or revoked.

2. Short-Term Contractor Personnel:

It is the policy of the DOJ that short-term contractors having access to DOJ information systems and/or DOJ facilities or space for six months or fewer are subject to the identity proofing requirements listed in items 1a. and 1b. above. The pre-appointment waiver requirements for short-term contractors are:

- a.Favorable review of the security questionnaire form;
- b.Favorable fingerprint results;

c. Favorable credit report, if required;⁵ and

d. Waiver request memorandum indicating both the position sensitivity/risk level and the duration of the appointment. The commensurate BI does not need to be initiated.

A badge may be issued following approval of the above waiver requirements and the badge will expire six months from the date of issuance. This process can only be used once for a short-term contractor in a twelve month period. This will ensure that any consecutive short-term appointments are subject to the full PFV-I identity proofing process.

For example, if a contractor employee requires daily access for a three or four-week period, this contractor would be cleared according to the above short-term requirements. However, if a second request is submitted for the same contractor employee within a twelve-month period for the purpose of extending the initial contract or for employment under a totally different contract for another three or four-week period, this contractor would now be considered "long-term" and must be cleared according to the long-term requirements as stated in this interim policy.

3. Intermittent Contractors:

An exception to the above-mentioned short-term requirements would be intermittent contractors.

a. For purposes of this policy, "intermittent" is defined as those contractor employees needing access to DOJ information systems and/or DOJ facilities or space for a maximum of one day per week, regardless of the duration of the required intermittent access. For example, the water delivery contractor that delivers water one time each week and is working on a one-year contract.

b. Contractors requiring intermittent access should follow the Department's escort policy. Please reference the August 11, 2004, and January 29, 2001, Department Security Officer policy memoranda that convey the requirements for contractor facility escorted access.

c. Due to extenuating circumstances, if a component requests unescorted access or DOJ IT system access for an intermittent contractor, the same pre-employment background investigation waiver requirements that apply to short-term contractors are required.

d. If an intermittent contractor is approved for unescorted access, the contractor will only be issued a daily badge. The daily badge will be issued upon entrance into a DOJ facility or space and must be returned upon exiting the same facility or space.

e. If an intermittent contractor is approved for unescorted access, the approval will not exceed one year. If the intermittent contractor requires unescorted access beyond one year, the contractor will need to be re-approved each year.

4. An individual transferring from another department or agency shall not be re-adjudicated provided the individual has a current (within the last five years), favorably adjudicated BI meeting HSPD-12 and DOJ's BI requirements.

5. The DOJ's current escorted contractor policy remains unchanged by this acquisition notice.

NOTES:

1. FIPS 201 is available at: www.csrc.nist.gov/publications/fips/fips201/FIPS-201-22505.pdf.

2. Under HSPD-12, long-term contractors are contractors having access to DOJ information systems and/or DOJ facilities or space for six months or longer. The PIV-I identity proofing process, including initiation and adjudication of the required background investigation, is required for all new long-term contractors regardless of whether it is the current practice to issue a badge. The second phase of HSPD-12 implementation (PIV-II) requires badge issuance to all affected long-term contractors.

3. For contractors in position sensitivity/risk levels above level 1, a favorable review of a credit check is required as part of the pre-appointment waiver package.

4. In order to avoid a delay in the hiring process, components should request an Advance NAC Report when initiating investigations to OPM. Per OPM's instructions, to obtain an Advance NAC Report, a Code "3" must be placed in block "B" of the "Agency Use Only" section of the investigative form. This report is available for all case types.

5. For contractors in position sensitivity/risk levels above level 1, a favorable review of a credit check is required as part of the pre-appointment waiver package.

(End of Clause)

DJAR-PGD-06-09 Reprogramming of Funds Notices to Congress for A-76 Competitions

Congressional Notification

Under the provisions of section 605(a) of the Department of Justice's appropriations act, an award in this procurement triggers a requirement that the Department notify congressional appropriations committees of actions resulting from the award which may include reorganization or contracting out of functions or activities presently performed by Federal employees.

An award in this procurement, and its implementation, are contingent upon satisfactory completion of the process required under section 605(a). After award, the Department will notify the source provider when this process has been satisfactorily completed and that implementation may begin. In the event that either congressional committee expresses reservations, the Department may cancel the procurement and award, without charge or penalty. Because the contract/performance start date could be delayed or actually cancelled due to the reprogramming notice to Congress, it is understandable not to include the expected start date in A-76 solicitations. However, the lack of a contract/performance start date makes it difficult for potential source providers to propose realistic pricing in their proposals.

As a best practice, it is recommended that future solicitations for streamlined or standard competitions include a notice similar to the

following sentences.

For pricing purposes only, offerors shall assume a contract/performance start date of XXXXXXXXXXXX, which is the date it is assumed that the transition/phase-in period begins. The actual contract/performance start date may be different. (See the "Congressional Notification" term of the solicitation).

(End of Clause)

DJAR-PGD-07-10 Ensuring New Acquisitions Include Common Security Configurations

The following language is to be used in all appropriate solicitations and contracts.

(a) The provider of information technology shall certify applications are fully functional and operate correctly as intended on systems using the Federal Desktop Core Configuration (FDCC). This includes Internet Explorer 7 configured to operate on Windows XP and Vista (in Protected Mode on Vista). For the Windows XP settings, see: http://csrc.nist.gov/itsec/guidance_WinXP.html and for the Windows Vista settings, see: http://csrc.nist.gov/itsec/guidance_vista.html

(b) The standard installation, operation, maintenance, update, and/or patching of software shall not alter the configuration settings from the approved FDCC configuration. The information technology should also use the Windows Installer Service for installation to the default "program files" directory and should be able to silently install and uninstall.

(End of Clause)

DJAR-PGD-07-12 Maintaining Contractor Performance During a Pandemic or Other Emergency

Continuing Contract Performance During a Pandemic Influenza or other National Emergency

During a Pandemic or other emergency we understand that our contractor workforce will experience the same high levels of absenteeism as our federal employees. Although the Excusable Delays and Termination for Default clauses used in government contracts list epidemics and quarantine restrictions among the reasons to excuse delays in contract performance, we expect our contractors to make a reasonable effort to keep performance at an acceptable level during emergency periods.

The Office of Personnel Management (OPM) has provided guidance to federal managers and employees on the kinds of actions to be taken to ensure the continuity of operations during emergency periods. This guidance is also applicable to our contract workforce. Contractors are expected to have reasonable policies in place for continuing work performance, particularly those performing mission critical services, during a pandemic influenza or other emergency situation.

The types of actions a federal contractor should reasonably take to help ensure performance are:

Encourage employees to get inoculations or follow other preventive measures as advised by the public health service.

Contractors should cross-train workers as backup for all positions performing critical services. This is particularly important for work such as guard services where telework is not an option.

- Implement telework to the greatest extent possible in the workgroup so systems are in place to support successful remote work in an emergency.

- Communicate expectations to all employees regarding their roles and responsibilities in relation to remote work in the event of a pandemic health crisis or other emergency.

Establish communication processes to notify employees of activation of this plan.

- Integrate pandemic health crisis response expectations into telework agreements.

With the employee, assess requirements for working at home (supplies and equipment needed for an extended telework period). Security concerns should be considered in making equipment choices; agencies or contractors may wish to avoid use of employees' personal computers and provide them with PCs or laptops as appropriate.

- Determine how all employees who may telework will communicate with one another and with management to accomplish work.

Practice telework regularly to ensure effectiveness.

- Make it clear that in emergency situations, employees must perform all duties assigned by management, even if they are outside usual or customary duties.

- Identify how time and attendance will be maintained.

It is the contractor's responsibility to advise the government contracting officer if they anticipate not being able to perform and to work with the Department to fill gaps as necessary. This means direct communication with the contracting officer or in his/her absence, another responsible person in the contracting office via telephone or email messages acknowledging the contractors notification.

The incumbent contractor is responsible for assisting the Department in estimating the adverse impacts of nonperformance and to work diligently with the Department to develop a strategy for maintaining the continuity of operations.

(End of Clause)

DJAR-PGD-08-04 Security of Systems and Data, Including Personally Identifiable Information

Security of Systems and Data, Including Personally Identifiable Data.

a. Systems Security

The work to be performed under this contract requires the handling of data that originated within the Department, data that the contractor manages or acquires for the Department, and/or data that is acquired in order to perform the contract and concerns Department programs or personnel.

For all systems handling such data, the contractor shall comply with all security requirements applicable to Department of Justice systems, including but not limited to all Executive Branch system security requirements (e.g., requirements imposed by OMB and NIST), DOJ IT Security Standards, and DOJ Order 2640.2E. The contractor shall provide DOJ access to and information regarding the contractor's systems when requested by the Department in connection with its efforts to ensure compliance with all such security requirements, and shall otherwise cooperate with the Department in such efforts. DOJ access shall include independent validation testing of controls, system penetration testing by DOJ, FISMA data reviews, and access by the DOJ Office of the Inspector General for its reviews.

The use of contractor-owned laptops or other media storage devices to process or store data covered by this clause is prohibited until the contractor provides a letter to the contracting officer (CO) certifying the following requirements:

1. Laptops must employ encryption using a NIST Federal Information Processing Standard (FIPS) 140-2 approved product;
2. The contractor must develop and implement a process to ensure that security and other applications software is kept up-to-date;
3. Mobile computing devices will utilize anti-viral software and a host-based firewall mechanism;
4. The contractor shall log all computer-readable data extracts from databases holding sensitive information and verify each extract including sensitive data has been erased within 90 days or its use is still required. All DOJ information is sensitive information unless designated as non-sensitive by the Department;
5. Contractor-owned removable media, such as removable hard drives, flash drives, CDs, and floppy disks, containing DOJ data, shall not be removed from DOJ facilities unless encrypted using a NIST FIPS 140-2 approved product;
6. When no longer needed, all removable media and laptop hard drives shall be processed (sanitized, degaussed, or destroyed) in accordance with security requirements applicable to DOJ;
7. Contracting firms shall keep an accurate inventory of devices used on DOJ contracts;
8. Rules of behavior must be signed by users. These rules shall address at a minimum: authorized and official use; prohibition against unauthorized users; and protection of sensitive data and personally identifiable information;
9. All DOJ data will be removed from contractor-owned laptops upon termination of contractor work. This removal must be accomplished in accordance with DOJ IT Security Standard requirements. Certification of data removal will be performed by the contractor's project manager and a letter confirming certification will be delivered to the CO within 15 days of termination of contractor work;

b. Data Security

By acceptance of, or performance on, this contract, the contractor agrees that with respect to the data identified in paragraph a, in the event of any actual or suspected breach of such data (i.e., loss of control, compromise, unauthorized disclosure, access for an unauthorized purpose, or other unauthorized access, whether physical or electronic), the contractor will immediately (and in no event later than within one hour of discovery) report the breach to the DOJ CO and the contracting officer's technical representative (COTR). If the data breach occurs outside of regular business hours and/or neither the CO nor the COTR can be reached, the contractor shall call the DOJ Computer Emergency Readiness Team (DOJCERT) at 1-866-US4-CERT (1-866-874-2378) within one hour of discovery of the breach. The contractor shall also notify the CO as soon as possible during regular business hours.

c. Personally Identifiable Information Notification Requirement

The contractor further certifies that it has a security policy in place that contains procedures to promptly notify any individual whose personally identifiable information (as defined by OMB) was, or is reasonably believed to have been, breached. Any notification shall be coordinated with the Department, and shall not proceed until the Department has made a determination that notification would not impede a law enforcement investigation or jeopardize national security. The method and content of any notification by the contractor shall be coordinated with, and be subject to the approval of, the Department. The contractor assumes full responsibility for taking corrective action consistent with the Department's Data Breach Notification Procedures, which may include offering credit monitoring when appropriate.

d. Pass-through of Security Requirements to Subcontractors

The requirements set forth in Paragraphs a through c above, apply to all subcontractors who perform work in connection with this contract. For each subcontractor, the contractor must certify that it has required the subcontractor to adhere to all such requirements. Any breach by a subcontractor of any of the provisions set forth in this clause will be attributed to the contractor.

B. Information Resellers or Data Brokers

For contracts where the Department obtains PII from a contractor (such as an information reseller or data broker) but the contractor does not handle the data described in Section A of this guidance document, the following clause must be used:

Information Resellers or Data Brokers

Under this contract, the Department obtains personally identifiable information about individuals from the contractor. The contractor

hereby certifies that it has a security policy in place which contains procedures to promptly notify any individual whose personally identifiable information (as defined by OMB) was, or is reasonably believed to have been, lost or acquired by an unauthorized person while the data is under the control of the contractor. In any case in which the data that was lost or improperly acquired reflects or consists of data that originated with the Department, or reflects sensitive law enforcement or national security interest in the data, the contractor shall notify the Department contracting officer so that the Department may determine whether notification would impede a law enforcement investigation or jeopardize national security. In such cases, the contractor shall not notify the individuals until it receives further instruction from the Department.

(End of Clause)

DJAR-PGD-08-05 Contractor Certification of Compliance with Federal Tax Requirements

Contractor Certification of Compliance with Federal Tax Requirements

By submitting a response to a solicitation or accepting a contract award, the contractor certifies that, to the best of its knowledge and belief, the contractor has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a nonfrivolous administrative or judicial proceeding.

(End of Clause)

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 this / these address(es):

[Insert one or more Internet addresses]

(End of clause)

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

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

(End of clause)

52.204-1 Approval of Contract (Dec 1989)

This contract is subject to the written approval of _____ and shall not be binding until so approved.

(End of clause)

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management database via <https://www.acquisition.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consists of two segments -

- (1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by -
 - (i) Government personnel and authorized users performing business on behalf of the Government; or
 - (ii) The Contractor, when viewing data on itself; and
- (2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for -
 - (i) Past performance reviews required by subpart 42.15;
 - (ii) Information that was entered prior to April 15, 2011; or
 - (iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.
- (c) The Contractor will receive notification when the Government posts new information to the Contractor's record.
 - (1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.
 - (2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.
 - (3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.
 - (d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

52.222-50 Alt I Combating Trafficking in Persons (Mar 2015) - Alternate I (Mar 2015)

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

Agent means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

"Coercion" means--

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

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

Commercially available off-the-shelf (COTS) item means--

- (1) Any item of supply (including construction material) that is--
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

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

"Forced Labor" means knowingly providing or obtaining the labor or services of a person--

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of--

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

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

"Severe forms of trafficking in persons" means--

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

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

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

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

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

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy.* The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not--

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

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

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

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7)(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall--

(1) Notify its employees and agents of--

(i)(A) The United States Government's policy prohibiting trafficking in persons described in paragraph (b) of this clause; and

(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title	Document may be obtained from:	Applies to performance in/at:
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[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the United States to which the document applies.]

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* (1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of--

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in--

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments until the Contractor has taken appropriate remedial action;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Declining to exercise available options under the contract;
- (6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.* (1) The Contractor shall, at a minimum--

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not--

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from--

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.* (1) This paragraph (h) applies to any portion of the contract that--

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.* (i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds \$500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

(End of clause)

52.232-29 Terms for Financing of Purchases of Commercial Items (Feb 2002)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated contract financing payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4, Contract Terms and Conditions Commercial Items.

(c) *Security for Government financing.* In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(d) Reservation of rights.

(1) No payment or other action by the Government under this clause shall-

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause-

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) *Content of Contractor's request for financing payment.* The Contractor's request for financing payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for financing payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer.

(f) *Limitation on frequency of financing payments.* Contractor financing payments shall be provided no more frequently than monthly.

(g) *Dates for payment.* A payment under this clause is a contract financing payment and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved payment requests within 30 days of submittal of a proper request for payment.

(h) *Conflict between terms of offeror and clause.* In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232-31) and the terms in this clause, the terms of this clause shall govern.

(End of clause)

52.232-32 Performance-Based Payments (Apr 2012)

(a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based pay-

ments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the ____ day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) Reduction or suspension of performance-based payments. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's--

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) Title.

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (*e.g.*, the termination clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor shall obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not--

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default.* If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights.* (1) No payment or vesting of title under this clause shall--

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause--

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment.* The Contractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for performance-based payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made;
- (4) Such information and documentation as is required by the contract's description of the basis for payment; and
- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification.* As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that--

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;
- (2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

52.252-4 Alterations in Contract (Apr 1984)

Portions of this contract are altered as follows:

(End of clause)

52.252-6 Authorized Deviations in Clauses (Apr 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of (DEVIATION) after the date of the clause.

(b) The use in this solicitation or contract of any _____ (48 CFR [insert regulation name]) clause with an authorized deviation is indicated by the addition of (DEVIATION) after the name of the regulation.

(End of clause)

Section 4 - List of Attachments

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