

## **Purchase Order Provisions**

### **Supplemental FAR Requirements**

#### PROCUREMENT CERTIFICATIONS

By acceptance and performance of this order, Seller shall submit the certification required in paragraph (b) of FAR 52.203-11. "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions", for all procurements valued at \$100,000 or more.

By acceptance and performance of this order, Seller certifies that, Seller will comply with the requirements of FAR 52.225-13 stated below.

Restrictions on Certain Foreign Purchases (June 2008) (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States. (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>. (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

By acceptance and performance of this order, Seller certifies that, except as previously disclosed in writing to Buyer's Purchasing Representative executing this order, neither Seller or its principals is presently debarred, suspended, or under consideration for debarment by the Federal Government in accordance with FAR 52.209-5.

For any order in excess of \$30,000, Seller shall submit the certification required in paragraph (b) of FAR 52.209-6. "Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment."

If any of the above certifications shall cease to be correct and accurate at any time during performance of this order, Seller shall immediately notify the Buyer's Purchasing Representative having cognizance over this order. Seller agrees that any failure to accurately certify, or any adverse change in such certification shall be grounds for any terminating this order for Seller's default. Seller agrees to indemnify and hold harmless Buyer for any losses, damages, fines or penalties imposed as the result of any of the above certifications being false.

#### SUPPLEMENTAL REQUIREMENTS

This agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. For FAR provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means Subcontract Administrator. The FAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. or from Government

web sites such as <http://acquisition.gov/far/index.html>. The following clauses are incorporated by reference:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (MAR 2009)

- 52.222-3 Convict Labor (June 2003) (E.O. 11755).
- 52.222-21 Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).
- 52.222-26 Equal Opportunity (Mar 2007) (E.O. 11246).
- 52.222-50 Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
- 52.225-13 Restrictions on Certain Foreign Purchases (Feb 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- 52.233-3 Protest After Award (Aug 1996) (31 U.S.C. 3553).
- 52.233-4 Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).
- 52.232-1 Payments (Apr 1984).
- 52.232-8 Discounts for Prompt Payment (Feb 2002).
- 52.232-11 Extras (Apr 1984).
- 52.232-25 Prompt Payment (Oct 2008).
- 52.233-1 Disputes (July 2002).
- 52.244-6 Subcontracts for Commercial Items (Mar 2009).
- 52.253-1 Computer Generated Forms (Jan 1991).

The following FAR clauses are incorporated by reference, unless the circumstances do not apply:

- 52.222-19 Child Labor—Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)
- 52.222-20 Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212) (Applies to contracts of \$100,000 or more).
- 52.222-36 Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212) (Applies to contracts of \$100,000 or more).
- 52.222-41 Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)

- 52.223-5 Pollution Prevention and Right-to-Know Information (Aug 2003) (E.O. 13148) (Applies to services performed on Federal facilities).
- 52.223-15 Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b) (Unless exempt pursuant to 23.204, applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—
  - (A) Delivered;
  - (B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
  - (C) Furnished by the Contractor for use by the Government; or
  - (D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)
- 52.225-1 Buy American Act—Supplies (Feb 2009) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—
  - (A) Is set aside for small business concerns; or
  - (B) Can not be set aside for small business concerns (see 19.502-2), and does not exceed \$25,000).
- 52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)
- 52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)
- 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).))

The following FAR clauses listed below are additional clauses that may apply:

- 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sept 2006) (Applies to contracts over \$30,000).
- 52.211-17 Delivery of Excess Quantities (Sept 1989) (Applies to fixed-price supplies).
- 52.226-6 Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)
- 52.247-29 F.o.b. Origin (Feb 2006) (Applies to supplies if delivery is f.o.b. origin).
- 52.247-34 F.o.b. Destination (Nov 1991) (Applies to supplies if delivery is f.o.b. destination).

*Inspection/Acceptance.* The Contractor shall tender for acceptance only 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 re-performance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights—

- (1) Within a reasonable period of 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.

*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.

*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 that 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 that reasonably could have been avoided.

*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.

*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.