

**ADVANCED SYSTEMS & TECHNOLOGY**

**(U) ATTACHMENT J-4, OPEN FRAMEWORK MODEL CONTRACT**

**(U) Version 2.0, 17 November 2021**

***Part of AS&T’s FY21-22 Open BAA Framework – Architecture After Next***

**(U) CHANGE MANAGEMENT LOG**

**FOR**

**ATTACHMENT J-4, OPEN FRAMEWORK MODEL CONTRACT**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **VERSION** | **DATE** | **REVISED BY** | **AREA AFFECTED** | **REMARKS** |
| 1.0 | 15 October 2020 | Karen McGrath | All | Initial Release |
| 2.0 | 10 November 2021 | Jennifer A. Hughes | Cover Page | Added |
| Change Management Log | Added |
| Section B | Updated period of performance end date |
| Section G | Updated name of contracting officer |
| Section I | Added FAR Clause 52.223-99 |
| Added NAM Clause 52.203-005 |
| Section K | Added FAR Clause 52.204-26 |
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| **NOTE**: Process for all Framework document version control: Initial version will be 1.0. Identify subsequent versions in the same FY by numerically increasing the number following the decimal, e.g., 1.**1**, 1.**2**, 1.**3**, etc. When an update in the following FY is required, the numerical version will change from **1**.X, to **2**.X, etc. If no changes are required in a given FY, a numerical change is not required. The review of all Framework documents occurs at FY-end and documented in requisite CMLs per guidance herein. | | | | |
| **Table is Unclassified** | | | | |

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| **SOLICITATION, OFFER AND AWARD** | | | | | | | | | | | | | | | | 1.THIS CONTRACT IS A RATED ORDER  UNDER DPAS (15 CFR 700) | | | | | | RATING | | | | | | | | PAGE OF PAGES | | | |
|  | | | | | | | | | | | | | | | |  | | | | | |  | | | | | | | | 1 | 70 | | |
| 2. CONTRACT NUMBER | | | | | | | | | | | 3. SOLICITATION NUMBER  NRO000-21-R-0010 | | | | | | | 4. TYPE OF SOLICITATION  SEALED BID (IFB)  NEGOTIATED (RFP) | | | 5. DATE ISSUED  10/19/2020 | | | | | 6. REQUISITION / PURCHASE NUMBER | | | | | | | |
| 7. ISSUED BY | | | | | | | | | | | | CODE | | |  | | | 8. ADDRESS OFFER TO (*If other than Item 7*) | | | | | | |  | | | | |  | | | |
| NRO 14675 Lee Road Chantilly, VA 20151-1715 | | | | | | | | | | | | | | | | | | Same as Block 7 | | | | | | | | | | | | | | | |
| NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder". | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **SOLICITATION** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. Sealed offers in original and | | | | | | | 1 | | | | copies for furnishing the supplies or services in the Schedule will be received at the place specified in item 8, or if hand carried, | | | | | | | | | | | | | | | | | | | | | |  |
|  | in the depository located in | | | | | | N/A | | | | | | | | | | | | | until | 5:00 PM | | | | | local time | | 09/30/2025 | | | | | |
|  | | | | | | | | | | | | | | | | | | | | | (*Hour*) | | | | |  | | (*Date*) | | | | | |
| CAUTION - LATE Submissions, Modifications, and Withdrawals: Section L. Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10. FOR INFORMATION  CALL | | | | | | | | A. NAME  Alexandra Markle | | | | | | | | | | B. TELEPHONE NO. (*NO COLLECT CALLS*) | | | | | | | | C. E-MAIL ADDRESS | | | | | | | |
|  | | | | | | | |  | | | | | | | | | | AREA CODE | | NUMBER | | | | EXT. | | markleal@nro.mil | | | | | | | |
|  | | | | | | | |  | | | | | | | | | | 703 | | 808-1319 | | | |  | |  | | | | | | | |
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| **OFFER (*Must be fully completed by offeror*)** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12. In compliance with the above, the undersigned agrees, if this offer is accepted within | | | | | | | | | | | | | | | | | | |  | calendar days ( *60 calendar days unless a different period is inserted by* the offeror) from the date | | | | | | | | | | | | | |
|  | for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the schedule. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13.DISCOUNT FOR PROMPT PAYMENT  (*See Section I, Clause No. 52.232-8*) | | | | | | | | | | | | | 10 CALENDAR DAYS (%) | | | | | 20 CALENDAR DAYS (%) | | | | | 30 CALENDAR DAYS (%) | | | |  | | CALENDAR DAYS (%) | | | | |
|  | | | | | | | | | | | | |  | | | | |  | | | | |  | | | |  | |  | | | | |
| 14. ACKNOWLEDGMENT OF AMENDMENTS  (*The offeror acknowledges receipt of amend-*  *ments to the SOLICITATION for offerors and*  *related documents numbered and dated):* | | | | | | | | | | | | | AMENDMENT NO. | | | | | | DATE | | | | AMENDMENT NO. | | | | | DATE | | | | | |
|  | | | | | | | | | | | | |  | | | | | |  | | | |  | | | | |  | | | | | |
|  | | | | | | | | | | | | |  | | | | | |  | | | |  | | | | |  | | | | | |
| 15A. NAME  AND  ADDRESS  OF  OFFEROR | | | | | CODE | | | | |  | | | | FACILITY | | |  | | | 16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER  *(Type or print)* | | | | | | | | | | | | | |
|  | | | | |  | | | | | | | | | | | | | | |  | | | | | | | | | | | | | |
| 15B. TELEPHONE NUMBER | | | | | | | | | | | | 15C. CHECK IF REMITTANCE ADDRESS  IS DIFFERENT FROM ABOVE - ENTER  SUCH ADDRESS IN SCHEDULE | | | | | | | | 17. SIGNATURE | | | | | | | | | | 18. OFFER DATE | | | |
| AREA CODE | | | NUMBER | | | | | | EXT. | | |  | | | | | | | |  | | | | | | | | | |  | | | |
|  | | |  | | | | | |  | | |  | | | | | | | |  | | | | | | | | | |  | | | |
| **AWARD (*To be completed by Government*)** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 19. ACCEPTED AS TO ITEMS NUMBERED | | | | | | | | | | | | 20. AMOUNT  TBD | | | | | | | | 21. ACCOUNTING AND APPROPRIATION | | | | | | | | | | | | | |
| 22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | |
| 10 U.S.C. 2304(c) | | | | | | ( | | | | | | )  41 U.S.C. 253 (c) | | | | ( | | | ) | 23. SUBMIT INVOICES TO ADDRESS SHOWN  IN (*4 copies unless otherwise specified*) | | | | | | | ITEM | | | | | |  |
| 24.ADMINISTERED BY (*If other than Item 7*) | | | | | | | | | | | | CODE | | | |  | | | | 25. PAYMENT WILL BE MADE BY | | | | | | CODE |  | | | | | | |
|  | | | | | | | | | | | | | | | | | | | |  | | | | | | | | | | | | | |
| 26. NAME OF CONTRACTING OFFICER (*Type or print*) | | | | | | | | | | | | | | | | | | | | 27. UNITED STATES OF AMERICA | | | | | | | | | | 28. AWARD DATE | | | |
|  | | | | | | | | | | | | | | | | | | | | (*Signature of Contracting Officer*) | | | | | | | | | |  | | | |
| IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| AUTHORIZED FOR LOCAL REPRODUCTION  Previous edition is unusable | | | | | | | | | | | |  | | | | | | | | | | | | | | | STANDARD FORM 33 (Rev 9-97)  Prescribed by GSA FAR (48 CFR) 53.214(c) | | | | | | |

**PART I - THE SCHEDULE**

**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B-1 Type of Contract and Total Contract Value**

The Contractor shall, in accordance with the terms and conditions set forth herein, furnish the necessary qualified personnel, services, travel, facilities and materials (except those specifically designated to be provided by the Government) and do all things necessary and incidental to complete the contractual effort in accordance with the Statement of Objectives (SOO), Statement of Work (SOW), Performance Work Statement (PWS), incorporated by Section C - Description/Specifications/Statement of Work hereto and the contractor's Technical Management Proposal dated , the contractor's Cost Volume dated and the contractor's Final Proposal Revision (FPR) dated are incorporated into the basic contract hereto.

(U//FOUO) The total current contract value is **TBD**.

CLIN 0001, as identified in this contract and in the total estimated amounts set forth below, is FFP as described under the Federal Acquisition Regulations (FAR) 16.202.   
  
Description: (U) TBD

|  |  | **Quantity** |  | **Unit Price** |  | **Units** |  | **Value** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Firm Fixed Price |  | 0 |  | TBD |  |  |  | TBD |
| Total |  |  |  |  |  |  |  | TBD |

The total value of Contract Line Item 0001, and any modifications thereto are shown below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Quantity** | **Unit Price** | **Units** | **Total** |
| BASIC | 0 | TBD |  | TBD |

CLIN 0002, as identified in this contract and in the total estimated amounts set forth below, is NSP as described in the description below.  
  
Description: (U) Data, Reviews, and Reports in accordance with the Contract Data Requirements List.

**SECTION C - DESCRIPTION/SPECS./WORK STATEMENT**

**C-1 Statement of Work**

The Government's Statement of Work listed below is incorporated by reference and made part of this contract as Attachment TBD to Part III of Section J here to:

| **Statements of Work Title** | **Date** |
| --- | --- |
| Contractor's Technical and Management Proposal |  |

**SECTION F - DELIVERIES OR PERFORMANCE**

**F-1 N52.211-006 Contract Period of Performance (SEP 2003)**

(a)    Period of Performance: The period of performance of this contract shall be:

| **CLIN** |  | **Start Date** |  | **Completion Date** |
| --- | --- | --- | --- | --- |
| 0001 |  | 10/15/2020 |  | 09/30/2025 |
| 0002 |  | 10/15/2020 |  | 09/30/2025 |

(b) The principal place of performance under this contract shall be the **Contractor's** facility located at: **TBD**

(c) The contractor shall immediately notify the Contracting Officer in writing when they encounter difficulty meeting performance requirements or anticipate difficulty in complying with the contract delivery schedule. This notification shall be informational in character; this provision shall not be construed as a waiver by the Government of any delivery schedule for any rights or remedies provided by law or under this contract.

**SECTION G - CONTRACT ADMINISTRATION DATA**

**G-1 GOVERNMENT POINTS OF CONTACT**

| **Title** | **Name** | **Phone Number** |
| --- | --- | --- |
| Contracting Officer | Jennifer Hughes | 703-808-4264 |
| Contract Specialist | Alexandra Markle | 703-808-1319 |
| COTR | TBD | TBD |

**G-2 Accounting and Appropriation Data**

| **Contract Doc** | **CLIN** | **RCA #** | **RCA ACTNG#** | **BLI** | **FY** | **BOC** | **PO Line** | **Dollars Obligated** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | Total: | | TBD |

**G-3 CLIN Obligation and Value Summary**

| **SUMMARY TOTAL OBLIGATED AND TOTAL VALUE BY CLIN** | | |
| --- | --- | --- |
| **CLIN** | **Dollars Obligated** | **Total CLIN Value** |
| Total: | TBD | TBD |

**G-4 N52.232-003 Instructions for Requesting Contract Payment (AUG 2019)**

(a) Vouchers and Invoices. Contractors with access to the Contractor Wide-Area Network (CWAN) or Industry Partner Access (IPA) shall request contract payment using NRO Electronic Invoicing. Contractors without access to NRO Electronic Invoicing shall request contract payment by submitting a Standard Form 1034, *Public Voucher for Purchases and Services Other Than Personal*. Contractors may request payment for commercial contracts using either the SF 1034 or a commercial invoice that contains all the information required by FAR 52.212-4(g). Requests for progress payments shall be prepared using Standard Form 1443, *Contractor's Request for Progress Payment*, and submitted to the Contracting Officer. Requests for contract payment that cannot be submitted using NRO Electronic Invoicing shall be submitted to the following Billing Office:

Name, Title and address of the Contracting Officer or designee:

**NAME TBD, COTR**

**U.S. Government, 14675 Lee Road, Chantilly VA 20151-1715**

The required mode of delivery: **Electronic invoice, email, or fax**

(b) Supporting Documentation. The contractor shall submit documentation supporting all amounts billed with each voucher. Supporting documentation may be prepared using Standard Form 1035, *Public Voucher for Purchases and Services Other than Personal- Continuation sheet,* or an equivalent contractor-designed form. All documents submitted via NRO Electronic Invoicing must be in PDF format.

(1) Fixed Price Contracts. The supporting documentation should include:

Total amounts billed by CLIN;

Quantity, unit price, and description of supplies delivered or services performed;

For level-of-effort CLINS, the actual labor hours expended by labor category;

Date(s) the work was performed and/or the supplies delivered;

Current and cumulative award fee billed and earned under each CLIN, if applicable; and

Any other information required by the contract.

(2) Cost Reimbursable Contracts. The supporting documentation should include:

Total amounts billed by CLIN;

Current and cumulative costs billed by major cost element;

Current and cumulative fee billed by CLIN, to include award fee, fixed fee, and incentive fee, and the formula for computation;

Quantity, unit price, and description of any supplies delivered;

Direct labor rates by labor category and indirect rates applied

Actual labor hours expended by labor category; and

Any other information required by the contract.

(3) For cost-reimbursable contracts with fee payments based on incurred cost, the contractor shall adjust the amount of fee billed when cost overruns occur, whether actual, potential, or perceived. All billed incentive fee amounts shall be based on the budgeted vice the actual cost of work performed on contracts requiring use of Earned Value Management (EVM). For incentive contracts not subject to EVM, the percentage of work complete will be a unilateral determination by the Contracting Officer. The methodology applied by the contractor to ensure that fee is not over-billed based on cost overruns will be approved in writing by the Contracting Officer before requesting payment of incentive fee.

(4) The following additional supporting documentation is also required:

(c) Voucher Preparation. All requests for contract payment shall be prepared in accordance with NAM Appendix N65, *Contract Payments,* with all charges segregated by CLIN and sub-CLIN (if applicable). The payment periods designated in the FAR Prompt Payment clause(s) contained in this contract will begin on the submission date for invoices submitted via Electronic Invoicing, or on the date, a proper invoice/voucher is received in the Billing Office listed above. Earned Award Fee must be billed on a separate invoice. The following additional voucher preparation instructions also apply:

**The terms "NRO" and "National Reconnaissance Office" must not appear on the invoice; use "U.S. Government" instead. Do not print the first six characters of the contract number on the invoice - type only the remaining characters, e.g., 07-C-1234. Include the name and telephone number of the company representative to be notified if the invoice is incorrect.**

(d) Improper Invoices. The Government billing office will notify the contractor of any apparent error, defect, or impropriety in a voucher/invoice within seven days of receipt by the Billing Office. Inquiries regarding vouchers/invoices submitted to the billing office should be directed to the Contracting Officer.

(e) Contractor Banking and Tax Information. The contractor shall promptly notify the Contracting Officer of any changes to electronic funds transfer information or taxpayer identification number by re-submitting the information required in clause N52.232-004, *Contract Payment Information.*

**PART II - CONTRACT CLAUSES**

**SECTION I - CONTRACT CLAUSES**

**I-1 N52.252-002 Clauses Incorporated by Reference (OCT 2015)**

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. The full text of each clause may also be accessed electronically at https://www.acquisition.gov and https://acq.westfields.net/nro/acquisition-manual.

| **Number** |  | **Title** |
| --- | --- | --- |
| 52.202-1 |  | Definitions (JUN 2020) |
| 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 (JUN 2020) |
| 52.203-7 |  | Anti-Kickback Procedures (JUN 2020) |
| 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 (JUN 2020) |
| 52.203-19 |  | Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) |
| 52.204-4 |  | Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (MAY 2011) |
| 52.209-6 |  | Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUN 2020) |
| 52.215-2 |  | Audit and Records -- Negotiation (JUN 2020) |
| 52.215-8 |  | Order of Precedence -- Uniform Contract Format (OCT 1997) |
| 52.222-1 |  | Notice to the Government of Labor Disputes (FEB 1997) |
| 52.222-3 |  | Convict Labor (JUN 2003) |
| 52.222-21 |  | Prohibition of Segregated Facilities (APR 2015) |
| 52.222-26 |  | Equal Opportunity (SEPT 2016) |
| 52.222-35 |  | Equal Opportunity for Veterans (JUN 2020) |
| 52.222-36 |  | Equal Opportunity for Workers with Disabilities (JUN 2020) |
| 52.222-37 |  | Employment Reports on Veterans (JUN 2020) |
| 52.222-40 |  | Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) |
| 52.222-50 |  | Combating Trafficking in Persons (OCT 2020) |
| 52.222-54 |  | Employment Eligibility Verification (OCT 2015) |
| 52.223-6 |  | Drug-Free Workplace (MAY 2001) |
| 52.223-18 |  | Encouraging Contractor Policies To Ban Text Messaging While Driving (JUN 2020) |
| 52.223-99 |  | Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (OCT 2021) (DEVIATION) |
| 52.225-1 |  | Buy American-Supplies (MAY 2014) |
| 52.225-13 |  | Restrictions on Certain Foreign Purchases (JUN 2008) |
| 52.227-3 |  | Patent Indemnity (APR 1984) |
| 52.232-17 |  | Interest (MAY 2014) |
| 52.232-23 |  | Assignment of Claims (MAY 2014) |
| 52.232-34 |  | Payment By Electronic Funds Transfer--Other Than System for Award Management (JUL 2013) |
| 52.232-39 |  | Unenforceability of Unauthorized Obligations (JUN 2013) |
| 52.232-40 |  | Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) |
| 52.233-1 Alternate 1 |  | Disputes (JUL 2002) (Alternate I) (DEC 1991) |
| 52.233-4 |  | Applicable Law for Breach of Contract Claim (OCT 2004) |
| 52.242-13 |  | Bankruptcy (JUL 1995) |
| 52.244-6 |  | Subcontracts for Commercial Items (OCT 2020) |
| 52.249-2 |  | Termination for Convenience of the Government (Fixed-Price) (APR 2012) |
| N52.203-001 |  | NRO Inspector General and the NRO Hotline (JAN 2020) |
| N52.203-002 |  | Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (SEP 2013) |
| N52.203-003 |  | Personal Conduct (OCT 2014) |
| N52.203-005 |  | NRO Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (DEC 2020) |
| N52.204-013 |  | Prime Contracts and Subcontracts with Educational Institutions (NOV 2018) |
| N52.204-015 |  | Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (AUG 2018) |
| N52.204-017 |  | Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020) |
| N52.209-003 |  | Organizational Conflict Of Interest (JUL 2016) |
| N52.219-001 |  | Utilization Of Small Business Concerns (DEC 2011) |
| N52.223-006 |  | Contractor Compliance with Environmental, Occupational Safety and Health, and System Safety Requirements (OCT 1997) |
| N52.231-003 |  | Contractor Training and Education (SEP 2013) |
| N52.231-004 |  | Prohibition on Contractor Acquisition of Personal Property for Use by Government Employees (JUL 2004) |
| N52.233-002 |  | Request for Dispute Resolution (NOV 2007) |
| N52.243-003 |  | Requests for Equitable Adjustment (APR 2004) |
| N52.244-001 |  | Subcontracts (Educational Institutions) (MAR 2015) |

**I-2 52.219-28 Post-Award Small Business Program Representation (MAY 2020)**

(a) Definitions. As used in this clause Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority. *Small business concern means* a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause. Such a concern is not dominant in its field of operation when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall represent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall represent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall represent its size status in accordance with the size standard in effect at the time of this representation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at https://www.sba.gov/document/support--table-size-standards.

(e) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following representation and submit it to the contracting office, along with the contract number and the date on which the representation was completed:

(1) The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code – **TBD** assigned to Contract Number – **TBD**.

(2) The Contractor represents that it [ ] is, [ ] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) The Contractor represents that it [ ] is, [ ] is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. The Contractor represents that—

(i) It [ ] is, [ ] is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(4)(i) of this clause is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. The Contractor represents that—

(i) It [ ] is, [ ] is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (h)(5)(i) of this clause is accurate for each EDWOSB concern participating in the joint venture. Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) The Contractor represents that it [ ] is, [ ] is not a veteran-owned small business concern.

(7) The Contractor represents that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(8) The Contractor represents that—

(i) It b is, b is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It b is, b is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture.

Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

**I-3 52.227-19 Commercial Computer Software License (DEC 2007)**

(a) Notwithstanding any contrary provisions contained in the Contractors standard commercial license or lease agreement, the Contractor agrees that the Government will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with Federal laws and the Federal Acquisition Regulation.

(b) (1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the Government except as provided in paragraph(b)(2) of this clause or as expressly stated otherwise in this contract.

 (2) The commercial computer software may be-

(i) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this contract; and

(vi) Used or copied for use with a replacement computer.

(3) If the commercial computer software is otherwise available without disclosure restrictions, the Contractor licenses it to the Government without disclosure restrictions.

(c) The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

Notice-Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No. **TBD**.

**I-4 52.232-25 Prompt Payment (JAN 2017)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—

(1) *Due date.*

(i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The **30th** day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The **30th** day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Certain food products and other payments*.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment *(e.*g., periodic lease payments), the due date will be as specified in the contract.

(3) *Contractor's invoice*. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms *(e.*g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) 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 *(e.*g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), 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.

(x) Any other information or documentation required by the contract *(e.*g., evidence of shipment).

(4) *Interest penalty*. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) *Computing penalty amount*. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) *Discounts for prompt payment*. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) *Additional interest penalty*.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

*(1)* Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

*(2)* Attach a copy of the invoice on which the unpaid late payment interest is due; and

*(3)* State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

*(1)* The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

*(2)* If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations *(e.*g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payment*. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Fast payment procedure due dates*. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) *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

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

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(iv) Contractor point of contact.

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

**I-5 N52.204-008 Notice of Litigation (AUG 2010)**

(a) With respect to litigation to which the Contractor is a party relating to this contract:

(1) The contractor shall within five business days notify the Contracting Officer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local governmental entities) or subpoena involving or in any way relating to this contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.

(2) The Contracting Officer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, and any documents and records provided to the third party in response to the subpoena.

(b) The contractor agrees to insert this clause in any subcontract under this contract.

**I-6 N52.204-009 Release of Contract Information (JAN 2020)**

(a) Public announcement of NRO contract awards and contract actions is prohibited. The contractor shall not use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose. This obligation will not expire upon completion or termination of this contract, but shall continue until rescinded by the U.S. Government.

(b) The contractor must obtain the Contracting Officer’s written approval before publishing a technical paper, making a presentation, or releasing any information based on, referencing, or related to an NRO contract or subcontract. This approval is not required when engaging with congressional intelligence committee members and their staffs; however, the contractor shall submit discussion or presentation material to the Contracting Officer for coordination with program security and program management to ensure security and information integrity prior to the engagement, or immediately following discussions that were not planned in advance.

(c) The contractor may provide past performance information regarding this contract to the NRO, the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Geospatial-Intelligence Agency, and the National Security Agency to support source selections at those agencies without Contracting Officer approval. The contractor is responsible for the proper classification and handling of such information, and shall provide a copy of the information provided to the NRO Contracting Officer. No past performance information regarding any NRO contract shall be provided to any other Government, commercial, or private organization or individual without the express written approval of the Contracting Officer.

(d) The contractor agrees to insert this clause in any subcontract under this contract.

(End of clause)

**I-7 N52.209-002 Disclosure of Ownership or Control by a Foreign Government (NOV 2017)**

(a) Definitions. As used in this clause:

(1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offerors officers or a majority of the offerors board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) *Entity controlled by a foreign government* means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government, or any individual acting on behalf of a foreign government. It does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before 23 October 1992.

(3) *Foreign government* includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) *Proscribed information* means:

\* Top Secret information;

\* Communications Security (COMSEC) material, excluding controlled cryptographic items when un-keyed or utilized with unclassified keys;

\* Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

\* Special Access Program (SAP) information; or

\* Sensitive Compartmented Information (SCI).

(b) Prohibition on Award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Director, National Reconnaissance Office or a designee has waived application of 10 U.S.C. 2536(a).

(c) Disclosure.

(1) The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision.  If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror’s immediate parent, intermediate parents, and the ultimate parent.

(2) The offeror shall submit a current SF 328, *Certificate Pertaining to Foreign Interests*, with their proposal.  The SF 328 must include the following information:

1. Offeror’s point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);
2. Name and address of offeror;
3. Name and address of entity controlled by a foreign government; and
4. Description of interest, ownership percentage, and identification of foreign government.

(d) If during contract performance the foreign government ownership or control status of the contractor changes, the contractor shall submit an updated SF 328 to the Contracting Officer within one week of the change.

(e) Flow-down.  The offeror agrees to include the requirements of this clause in all subcontract solicitations and resulting subcontracts that involve potential access to proscribed information under this solicitation and any resulting contract.

(End of clause)

**I-8 N52.209-006 Enabling Clause for Prime and Support Contractor Relationships (OCT 2011)**

(a) The Government currently has, or may enter into, contracts with one or more of the following companies, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Governments management and oversight of a program or effort. These companies (hereafter referred to as support contractors), are obligated by the terms of clause N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, incorporated into their respective contracts, and/or by separate non-disclosure, confidentiality, proprietary information, or similar agreements to safeguard the sensitive and proprietary information of other contractors, subcontractors, suppliers, and vendors to which they have access.

**Aerospace, MITRE, Engility, Agilex Technologies Inc, Alphacat Consulting Inc, Apogee Integration LLC, Arctelum LLC (Independent Contractor), Big Sky Associates Inc, Cimarron, DPM Consulting, Eagle1 LLC (Independent Contractor), Eric D Thiel, Federal Business Council Inc, FTS International LLC, G&K Management Inc, G&N Corporation, Instrumental Inc, Integrity Applications Inc, James Thomas Llyod, John H Spencer (Independent Contractor), Kinsey Technical Services, Mantech International Corporation, Mantech SRS Technologies, Mark Davis (Independent Contractor), New River Systems Corporation, New World Solutions, NXTRAC (Independent Contractor), Optical Sensing Consultants LLC (Independent Contractor), Pardus, Peter Demitry (Independent Contractor), Randy Nees, Inc, Richard Van Wagoner Consulting, RTI Consulting, SAIC, Scitor Corporation, SE MATTERS LC (Independent Contractor), Space Systems Integration, Stapor Research Ins, Stratos, Sybernetics International (Independent Contractor), Systeka Inc, System Dynamics Corporation (Independent Contractor), System of System Analytics Inc, Systems and Software International LLC, The Gammon Group LLC (Independent Contractor), The Orbital Mechanic LLC, Welkin Associates Ltd**

 (b) In the performance of this contract, the contractor agrees to cooperate with the companies listed above. Cooperation includes, but is not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access contractor integrated data environments and facilities used in the performance of the contract.

(c) The contractor must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this contract. Exceptions, such as when the contractor seeks to restrict access to contractor trade secrets, will be handled on a case-by-case basis. If the contractor seeks to limit distribution of data to Government personnel only, the contractor must submit this request in writing to the Contracting Officer.

(d) The contractor further agrees to include in all subcontracts, except for those to provide only commercial and/or non-developmental items, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This clause does not relieve the contractor of the responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.

(e) The contractor and its subcontractors are not required to take contractual direction from support contractors.

(f) Clauses N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, and N52.209-008, which will be incorporated into all NRO support contracts, require the support contractors to protect data and software related to this contract, and prohibit them from using such data for any purpose other than performance of the support contract.

(g) Support contractors shall protect the proprietary information of disclosing contractors, subcontractors, suppliers, and vendors in accordance with clause N52.209-008. Because this clause provides that such disclosing contractors, subcontractors, suppliers, and vendors are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. 2320(f)(2)(B). Accordingly, the contractor may only enter into a separate non-disclosure, confidentiality, proprietary information, or similar agreement with a disclosing party on an exception basis, and only after notifying the Contracting Officer. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure that the execution of any non-disclosure agreement does not delay or inhibit performance of this contract, and the Government shall require support contractors to do the same. Such agreements shall not otherwise restrict any rights due the Government under this contract. Separate non-disclosure agreements may be executed only in the following exceptional circumstances:

(1) The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;

(2) The support contractor will require access to extremely sensitive business data; or

(3) Other unique business situations exist in which the disclosing party can clearly demonstrate that clause N52.209-008 does not adequately protect their competitive interests.

(h) Any proprietary information furnished to support contractors shall be:

(1) Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or

(2) Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or

(3) Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the contractor marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or

(4) Disclosed by delivery of an electronic storage medium or memory device, and the contractor marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

(i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

(1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;

(2) In the public domain or becomes publicly known through no wrongful act of the support contractor;

(3) Proprietary information disclosed by the support contractor with the contractors prior written permission;

(4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;

(5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;

(6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or

(7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.

(j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause or clause N52.209-008 shall be in writing and shall be deemed to have been given on:

(1) The date received if delivered personally or by overnight courier;

(2) The third day after being deposited in the U.S. mail, postage prepaid; or

(3) The date sent if sent by facsimile transmission or e-mail with a digital copy.

(k) The Government and contractor agree to cooperate in resolving any unauthorized disclosure or misuse of proprietary information by a support contractor. This shall not be construed as requiring the contractor to conduct an inquiry into an unauthorized disclosure or misuse, or as authorizing the allocation of costs for such an inquiry directly to this contract. Any costs incurred by the contractor in said fact-finding efforts may be allowable and allocable upon determination of the Contracting Officer after adjudicating the circumstances related to any unauthorized disclosures or misuse.

(End of clause)

**I-9 N52.215-010 Exclusive Teaming Prohibition (JAN 2020)**

(a) Definition. An exclusive teaming arrangement is created when two or more companies agree—in writing, through understandings, or by any other means—to team together to pursue an NRO procurement program, and further agree not to team with any competitors for that program.

(b) Prohibition. Offerors are prohibited from entering into any exclusive teaming arrangements. The NRO has determined that such arrangements unduly limit competition. Corporate or company capabilities below the prime-level essential to contract performance must be made available on fair and equitable terms to all competitors. The Government will direct the dissolution of any exclusive teaming arrangement which the Contracting Officer discovers, or prohibit the offer from further award consideration. If, after contract award, the Government becomes aware that the awardee entered into an exclusive teaming arrangement, the contract shall be voidable at the Government’s option. This prohibition does not apply to the following exclusive teaming arrangement(s) approved in accordance with paragraph (c):

NONE

(c) Waiver. Parties to an exclusive teaming arrangement may request a waiver from the NRO Director of Contracts to maintain the arrangement. Such written requests must explain the purpose for the arrangement and why it is not anti-competitive.

(End of clause)

**I-10 N52.223-005 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (JAN 2004)**

(a) Definitions. As used in this clause:

(1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Government items, equipment, or facilities.

(2) *Toxic or hazardous materials* means those materials identified in the EPA Title III List of Lists.

(b) The contractor is prohibited from transporting, storing, disposing, or using toxic or hazardous materials in performing this contract except for those materials listed in (c) below or when authorized in writing by the Contracting Officer.

(c) The following toxic and hazardous materials are authorized for use in the performance of this contract:

| **TOXIC MATERIAL** | **USE** | **LIMITATIONS** |
| --- | --- | --- |
| NONE | N/A | N/A |

**I-11 N52.225-003 Export Controlled Items (NOV 2018)**

(a) *Definition*.  “Export-controlled items,” as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) “Defense items,” defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) “Items,” defined in the EAR as “commodities”, “software”, and “technology,” terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR.  The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to‒

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);

(2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

**I-12 N52.227-001 Technical Data and Computer Software: Commercial Items (JUL 2018)**

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(2) *Commercial item* means:

(i) Any item, other than real property, but inclusive of computer software, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and

(A) Has been sold, leased, or licensed to the general public; or

(B) Has been offered for sale, lease, or license to the general public;

(ii) Any item that evolved from an item described in paragraph (i) of this definition through advances in technology or performance, and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation or contract;

(iii) Any item that would satisfy a criterion expressed in paragraphs (i) or (ii) of this definition, but for

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor modifications" means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process or computer software. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(iv) Any combination of items meeting the requirements of paragraphs (i), (ii), (iii), or (v) of this definition that are of a type customarily combined and sold in combination to the general public;

(v) Installation services, maintenance services, repair services, training services, and other services if

(A) Such services are procured for support of an item referred to in paragraph (i), (ii), (iii), or (iv) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved, and under standard commercial terms and conditions. For purposes of these services

(A) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain, and that can be substantiated through competition or from sources independent of the offerors.

(vii) Any item, combination of items, or service referred to in paragraphs (i) through (vi) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

(3) *Computer database* means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

(4) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(5) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. The term does not include computer databases or computer software documentation.

(6) *Computer software documentation* means owners manuals, users manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the computer software.

(7) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(8) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 403(8)). This term does not include computer software or business data.

(b) License in Commercial Technical Data.

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data relating to a commercial item, and to permit others to do so, that:

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions.

(2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only.

(3) The Government shall not use the technical data to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by Government support contractors.

(c) License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.

(d) Additional License Rights. The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software. However, if the Government desires to obtain additional rights in technical data or computer software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether acceptable terms for transferring such rights can be reached. All technical data and computer software in which the contractor grants the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall specifically enumerate the additional rights granted the Government.

(e) Release From Liability. The contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(End of clause)

**I-13 N52.227-002 Rights In Technical Data and Computer Software: Noncommercial Items (FEB 2011)**

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(2) *Computer data base* means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owners manuals, users manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the software.

(6) *Delivery* means the formal act of transferring technical data, computer software, or business data to the Government as expressly delineated in the contract (including, but not limited to the Contract Data Requirements List, the statement of work, or elsewhere in the contract), in accordance with a specified schedule.

(7) *Detailed manufacturing or process data* means technical data and computer software that describes the steps, sequences, and conditions of manufacturing, processing, or assembly used by the manufacturer to produce an item or component, or to perform a process.

(8) *Developed* means that an item, component, or process, or an element of computer software has been shown through sufficient analysis or test to demonstrate to one of ordinary skill in the applicable art that there is a reasonable probability that the item, component, process, or element of computer software will work or perform its intended application, function, or purpose.

(9) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof. Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense. Private expense determinations should be made at the lowest practicable level.

(10) *Developed exclusively with Government funds* means all the costs of development were charged directly to a Government contract.

(11) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a Government contract, and partially with costs charged directly to a Government contract.

(12) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(13) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign Governments or international organizations. Government purposes include providing technical data and computer software for use in a competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software for commercial purposes or authorize others to do so.

(14) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)). This term does not include computer software or business data.

(b) Government Rights in Technical Data and Computer Software.

(1) *Government purpose rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction, to release or disclose technical data or computer software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.

(i) The Government shall have Government purpose rights for a five-year period after contract completion or for such other period as may be mutually negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.

(ii) The contractor has the exclusive right, including the right to license others, to use technical data or computer software in which the Government has obtained Government purpose rights under this contract, for any commercial purpose during the time period specified in paragraph (b)(1)(i) above and/or in the Government purpose rights legend prescribed by this clause.

(iii) The Government shall have Government purpose rights in technical data or computer software delivered under this contract that:

(A) Pertain to items, components, computer software, or processes developed with mixed funding, except when the Government is entitled to unlimited rights;

(B) Were created with mixed funding in the performance of a contract that does not specifically require the development, manufacture, construction, or production of items, components, computer software, or processes;

(C) The contractor has previously or is currently providing with Government purpose rights under another Government contract; or

(D) The parties have agreed shall be delivered with Government purpose rights.

(iv) The Government may release the technical data or computer software to any third party as described in paragraph (b)(1) above if:

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-005, *Protection of Information*, and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause N52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(2) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.

(i) The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data, or authorize the use or reproduction of the data by persons outside the Government if such reproduction, release, disclosure, or use is:

(A) Necessary for emergency repair and overhaul. In each instance of disclosure outside the Government, the Government shall:

(I) Prohibit the further reproduction, release, or disclosure of such technical data;

(II) Notify the party who has granted limited rights that such reproduction or use by, or release or disclosure to particular contractors or subcontractors is necessary;

(III) Insert clause N52.209-005, *Protection of Information,* *and* N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends,* into the contractual arrangement with the receiving development contractors;

(IV) Insert clause N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement,* and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends,* into the contractual arrangement with the receiving support contractor(s). An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution; and

(V) Require the recipient of limited rights technical data necessary for emergency repair or overhaul to destroy such technical data and any copies in its possession promptly following completion of the emergency repair/overhaul, and to notify the contractor that it has been destroyed; or

(B) Is in the interest of the Government when a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government is required for evaluation or information purposes, and is subject to a prohibition on further release, disclosure, or use of the technical data.

(ii) The Government and the contractor agree to cooperate to ensure that execution of necessary NDAs shall not delay or inhibit performance of this contract. Said agreements shall not otherwise restrict any rights due the Government under this contract.

(iii) Except as otherwise provided under paragraphs (b)(6)(i)-(xi), the Government shall have limited rights in technical data delivered under this contract that:

(A) Pertain to items, components, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause;

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes; or

(C) The parties have agreed shall be delivered with limited rights.

(iv) The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, or display, technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such items.

(3) *Prior Government rights* means that technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(4) *Restricted rights* apply only to non-commercial computer software, and means the Governments rights to:

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time-shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software, provided that the Government may

(A) Use the modified software only as provided in paragraphs (b)(4)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (b)(4)(ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors is necessary;

(B) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-005, *Protection of Information,* and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(C) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement,* and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.* When clause N52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(D) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(E) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose; and

(F) Such use is subject to the limitation in paragraph (b)(4)(i) of this clause.

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-005, *Protection of Information,* and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement,* and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause N52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract.

(D) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose.

(vii) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense.

(viii) The contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(5) of this clause). The license shall enumerate the additional rights granted the Government.

(5) *Specifically negotiated license rights* means a license granted by the contractor wherein the standard license rights granted to the Government under paragraphs (b)(1), (2), (3), (4), and (6), including the period during which the Government shall have government purpose rights in technical data or computer software, are modified by mutual agreement to provide such rights as the parties consider appropriate, but does not provide the Government lesser rights than limited rights for technical data or restricted rights for computer software unless mutually agreed by the contracting parties. Any rights so negotiated shall be identified in a license agreement made part of this contract and incorporated into Section J.

(6) *Unlimited rights* means the rights to use, modify, reproduce, perform, display, release, or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so. The Government shall have unlimited rights in:

(i) Technical data pertaining to an item, component, or process, or pertaining to software code or a software program that has been or will be developed exclusively with Government funds;

(ii) Computer software developed exclusively with Government funds;

(iii) Form, fit, and function data;

(iv) Technical data that is necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(v) Studies, analyses, test data, or similar data when the study, analysis, test, or similar work was specified as an element of performance;

(vi) Computer software documentation required to be delivered under this contract;

(vii) Technical data created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(viii) Corrections or changes to technical data or computer software furnished by the Government;

(ix) Technical data or computer software that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on the further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party, or the sale or transfer of some or all of a business entity or its assets to another party;

(x) Technical data or computer software in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;

(xi) Technical data or computer software furnished to the Government under this or any other Government contract or subcontract thereunder, with Government purpose rights, limited rights, or restricted rights, and the restrictive condition(s) has/have expired, or the Government purpose rights and the contractor's exclusive right to use such data for commercial purposes have expired.

(c) For business data marked as proprietary or with similar legends, the Government may duplicate, use, and disclose such data within the Government solely for evaluation, verification, validation, reporting, and program monitoring and management purposes in connection with this contract. The Government may disclose such business data to its support contractors identified in clause N52.209-006, *Enabling Clause for Prime and Support Contractor Relationships,* for these same purposes if and when:

(1) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-005, *Protection of Information,* and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;

(2) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement,* and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.* When clause N52.209-008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the business data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.

(i) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;

(d) Other Information That Cannot Easily Be Categorized. For information that cannot easily be categorized as technical data or business data (e.g., program schedules, Earned Value Management System reports, and program management reports), and is of sufficient detail to show a contractors confidential business practices, shall be identified before or as soon as practicable after contract award. The parties will agree as to the parties rights and obligations in such data and how it is to be marked, handled, used, and disclosed to third parties. Such agreement shall be in writing, attached to, and made a part of the contract.

(e) Release from Liability. The contractor agrees to release the Government from liability for any release or disclosure of technical data and computer software made in accordance with this clause, in accordance with the terms of a license per this clause, or by others to whom the recipient has released or disclosed the data, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed contractor data marked with restrictive legends.

(f) Rights in Derivative Computer Software or Computer Software Documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(g) Contractor Rights in Technical Data and Computer Software. The contractor retains all rights not granted to the Government.

(h) Third Party Copyrights. The contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data and computer software to be delivered under this contract unless the contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses of the appropriate scope as defined in paragraphs (b)(1), (2), (4) and (6) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the technical data and computer software transmittal document.

(i) Assertions of Other than Unlimited Rights.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (i)(3) of this clause, technical data and/or computer software that the contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software is listed in the Attachment.

(3) The contractor may make other assertions of other than unlimited rights in technical data and/or computer software after contract award. Such assertions must be based on new information or inadvertent omission unless the inadvertent omission would have materially affected the source selection decision in the reasonable determination of the Contracting Officer (in which case no assertion based on an inadvertent omission may be allowed).

(4) The contractor shall submit such post-contract award assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data or computer software. All new assertions submitted after award shall be added to the Attachment in a timely fashion after submission of the assertion to the Contracting Officer. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) shall include the information specified in paragraph (d) of clause N52.227-004, *Identification and Assertion of Use, Release, or Disclosure Restrictions*.

(5) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). The Contracting Officer reserves the right to add the contractors assertions to the Attachment and validate any listed assertion at a later date in accordance with the procedures outlined in clause N52.227-003, *Validation of Restrictive Markings on Technical Data and Computer Software*.

(j) Marking Requirements for Delivered Technical Data or Computer Software. The contractor may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software delivered to the Government by marking such technical data and computer software. Such markings shall be in the form of legends found in paragraphs (k)(1) through (4), or as otherwise authorized in this contract, (e.g., pursuant to an agreement for the marking of mixed data pursuant to paragraph (d) of this clause). The notice of copyright prescribed under 17 U.S.C. 401 or 402 (with language, if applicable, noting that the Government contributed funding and therefore has rights in the copyrighted material as specified in clause N52.227-002) is also allowed.

(k) General Marking Instructions. The contractor shall conspicuously and legibly mark the appropriate legend on all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, on the title/cover page of the printed material containing technical data or computer software for which restrictions are asserted. Mark each subsequent sheet of data with an abbreviated marking(s) to indicate the applicable restrictive rights assertion(s), and refer to the title/cover page for additional information. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, annotating, or other appropriate identifier. Technical data and computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data and computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(1) Government Purpose Rights Markings. Technical data or computer software delivered or otherwise furnished to the Government with Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Expiration Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(1) of clause N52.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

(2) Limited Rights Markings. Technical data delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

Limited Rights

Contract No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Governments rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of clause N52.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of technical data, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data must promptly notify the above-named contractor.

(End of legend)

(3) Restricted Rights Markings. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by paragraph (b)(4) of clause N52.227-002, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such computer software must promptly notify the above-named contractor.

(End of legend)

(4) Special License Rights Markings. Technical data and computer software in which the Governments rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

Contract No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Governments rights to use, modify, reproduce, release, perform, display, or disclose this data and/or software are restricted by \_\_\_\_\_\_\_\_\_\_\_\_ *[Insert license identifier]*. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(l) Pre-Existing Data Markings. If the terms of a prior contract or license permitted the contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose a technical data or computer software deliverable under this contract, and those restrictions are still applicable, the contractor may mark such technical data or computer software with the appropriate restrictive conforming legend for which the technical data or computer software qualified under the prior contract or license. The marking procedures in paragraphs (j) and (k) of this clause shall be followed.

(m) Removal of Unjustified Markings. Notwithstanding any other provision of this contract concerning inspection and acceptance, if any technical data or computer software delivered or otherwise provided under this contract are marked with the notices specified at (k)(1)-(4) of this clause, and the use of such is not authorized by this clause, the Government may ignore, or at the contractors expense, correct or strike the marking if, in accordance with the procedures in clause N52.227-003, *Validation of Restrictive Markings on Technical Data and Computer Software,* of this contract, the technical data or computer software is delivered or otherwise provided with a restrictive marking determined to be unjustified.

(n) Removal of Nonconforming Markings. A nonconforming marking is a marking placed on technical data or computer software delivered to the Government under this contract that is not in a format authorized by this contract. Correction of nonconforming markings is not subject to the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract. To the extent practicable, the Government shall return technical data or computer software marked with nonconforming markings to the contractor and provide the contractor an opportunity to correct or strike the nonconforming marking at no cost to the Government. If the contractor fails to correct the nonconforming marking and return the corrected technical data or computer software within 60 days following the contractors receipt of the data, the Contracting Officer may ignore, or at the contractors expense, remove, correct, or strike any nonconforming marking.

(o) Unmarked Technical Data or Computer Software. Technical data or computer software delivered to the Government under this contract without restrictive markings as set forth herein shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. However, to the extent the technical data or computer software has not been disclosed without restriction outside the Government, the contractor may request, within six months after delivery of such technical data or computer software (or a longer time approved by the Contracting Officer for good cause shown), permission to have notices placed on qualifying technical data or computer software at the contractors expense, and the Contracting Officer may agree to do so if the contractor:

(1) Identifies the technical data or computer software on which the omitted notice is to be placed;

(2) Demonstrates that the omission of the notice was inadvertent;

(3) Establishes that the use of the proposed notice is authorized; and

(4) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such technical data or computer software made prior to the addition of the notice or resulting from the omission of the notice.

(p) Relation to Patents. Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(q) Limitation on Charges for Rights in Technical Data or Computer Software.

(1) The contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when

(i) The Government has acquired, by any means, the same or greater rights in the technical data or computer software; or

(ii) The technical data or computer software is available to the public without restrictions.

(2) The limitation in paragraph (q)(1) of this clause

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the contractor to acquire rights in subcontractor or supplier technical data or computer software if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(r) Applicability to Subcontractors or Suppliers.

(1) The contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (i) of this clause are recognized and protected.

(2) Whenever any technical data or computer software for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the contractor shall flow down this clause to all of its subcontractors, vendors or suppliers (at any tier), and require its subcontractors, vendors, or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data or computer software required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data or computer software which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data or computer software directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

**I-14 N52.227-003 Validation of Restrictive Markings on Technical Data and Computer Software (FEB 2011)**

(a) The Government shall presume that a contractor's asserted use or release restrictions are justified on the basis that the item (to include computer software), component, or process was developed exclusively at private expense for commercial items as defined in FAR Part 12. The Government will not challenge such assertions unless information the Government demonstrates that the item, component, or process was not developed exclusively at private expense.

(b) Justification. The contractor is responsible for maintaining records sufficient to justify the validity of its markings that restrictions on the Governments right to use, modify, reproduce, perform, display, release, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except for commercial items, the contractors shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(c) Pre-challenge Request for Information.

(1) The Contracting Officer may request the contractor to furnish a written explanation for any restriction asserted by the contractor on the right of the United States to use, or authorize use of, technical data or computer software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the contractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the contractor to justify the validity of any restrictive marking on technical data or computer software, accompanied with supporting documentation. The contractor shall submit such written data within a reasonable time after it is requested by the Contracting Officer.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking, and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer shall follow the procedures in paragraph (d) of this clause.

(3) If the contractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) of this clause.

(d) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a Contracting Officer's final decision, issued pursuant to paragraph (f) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractorto which such notice is being provided); and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) of this clause.

(2) The Contracting Officer shall extend the time for response if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The contractor's or subcontractors written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978, and shall be certified in the form prescribed at FAR Subpart 33.207, regardless of dollar amount.

(4) A contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first unanswered challenge. The Contracting Officer initiating the first unanswered challenge after consultation with the contractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the contractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) Final Decision When Contractor or Subcontractor Fails to Respond. When a contractor or subcontractor fails to respond to a challenge notice, other than a failure to respond to a challenge related to a commercial item, the Contracting Officer will issue a final decision to the contractor or subcontractor in accordance with the *Disputes* clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (f)(2)(ii) through (iv) of this clause.

(f) Final Decision When the Contractor Responds.

(1) If the Contracting Officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractors response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.

(2) (i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the contractor or subcontractor in accordance with the *Disputes* clause of this contract. Notwithstanding paragraph (e) of the *Disputes* clause, the final decision shall be issued within sixty (60) days after receipt of the contractors or subcontractors response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for ninety (90) days from the issuance of the Contracting Officer's final decision. The contractor agrees that if it intends to file suit in the United States Claims Court, it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the contractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor to take the required action constitutes agreement with the Contracting Officers final decision.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the contractor agrees that the Government may strike or ignore the restrictive markings, if the contractor fails to file its suit within one (1) year after issuance of the Contracting Officer final decision. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the contractor agrees that the Government may, following notice to the contractor, authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the Contracting Officer final decision, and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines, following notice to the contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the contractor agrees that the Government may authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the final decision and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

(g) Final Disposition of Appeal or Suit.

(1) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained:

(i) The restrictive marking on the technical data or computer software shall be struck, canceled, ignored, or corrected at the contractors or subcontractors expense; and

(ii) If the restrictive marking is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained:

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the contractor or subcontractor in defending the marking if the challenge by the Government is found not to have been made in good faith.

(h) Duration of Right to Challenge. The Government, when there are reasonable grounds, may review and challenge the validity of any restriction asserted by the contractor or subcontractor on the Governments rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software delivered, to be delivered, or otherwise provided by the Contractor or subcontractor in the performance of a contract. During the period within three (3) years of final payment on a contract, or within three (3) years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge any restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software:

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction.

(i) Decision Not to Challenge. The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only the Contracting Officers final decision resolving a formal challenge by sustaining the validity of a restrictive marking, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction sustaining the assertion, constitutes validation as addressed in 10 U.S.C. 2321.

(j) Privity of Contract. The contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings or assert restrictions on the Governments right to use, modify, release, perform, display, or disclose technical data or computer software. However, neither this clause nor any action taken by the Government under this clause shall create or imply privity of contract between the Government and subcontractors.

(k) Flowdown. The contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software, except contractual instruments for commercial items or commercial components.

(End of clause)

**I-15 N52.227-004 Identification and Assertion of Use, Release, or Disclosure Restrictions (JUL 2018)**

(a) The terms used in this clause are defined in the *Technical Data and Computer Software: Noncommercial Items* clause contained in this contract.

(b) The identification and assertion requirements in this clause apply to technical data and computer software to be delivered with other than unlimited rights. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The contractor's assertions, including the assertions of its subcontractors or suppliers, shall be submitted as an attachment to its offer/proposal in the following format, dated and signed by an official authorized to contractually obligate the contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

 The contractor asserts for itself, or the person identified below asserts that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

|  |  |  |  |
| --- | --- | --- | --- |
| Technical Data or Computer Software  to Be Furnished  With Restrictions  (1) | Basis for  Assertion    (2) | Asserted  Rights Category    (3) | Name of Person Asserting Restrictions  (4) |
| (LIST)(5) | (LIST) | (LIST) | (LIST) |

(1) For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process (to include document titles, version numbers, and dates for clarity). For computer software or computer software documentation, identify the software or documentation (to include document and software titles, version numbers, and dates for clarity).

(2) Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

(3) Enter the asserted rights category (e.g., Government purpose license rights from a prior contract, limited, restricted, or Government purpose rights under this or a prior contract, or specially negotiated licenses).

(4) Identify the corporation, individual, or other person, as appropriate.

(5) Enter None when all data or software will be submitted without restrictions.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of identification and assertion)

(e) A contractor's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its contractor will constitute a minor informality. If assertions are required and the offeror does not correct such informality within the time prescribed by the Contracting Officer, the offer may be ineligible for award.

(f) If the contractor is awarded a contract, the assertions identified in paragraph (d) of this provision shall be included in an attachment (the Attachment) and incorporated as a separate attachment in the resultant contract.  Upon request by the Contracting Officer, the contractor shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion. Updates to the assertion list shall be included in an amended Attachment.

(End of clause)

**I-16 N52.227-005 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (JUL 2018)**

(a) The terms limited rights, restricted rights, special license rights, and Government purpose rights are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Technical data or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI Marked with Limited or Restricted Rights Legends. The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person. Prior to providing limited rights technical data or restricted rights computer software as GFI, the Government shall ensure that:

(i) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-005, *Protection of Information*, and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(ii) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.*

(2) GFI Marked with Government Purpose Rights Legends. The contractor shall use technical data or computer software received from the Government with Government purpose rights legends for Government purposes only. The contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such technical data or computer software for any commercial purpose, or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the contractor shall coordinate with the Contracting Officer before requiring the persons to whom disclosure will be made to complete and sign non-disclosure agreements including the same limitations included in this paragraph.

(3) GFI Marked with Special License Rights Legends. The contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license.

(4) GFI technical data or computer software marked with commercial restrictive legends.

(i) The contractor shall use, modify, reproduce, perform, display technical data and/or computer software that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e. marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract.  The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, release or disclose such data to any unauthorized person. Prior to providing technical data or computer software marked with commercial restrictive legends, the Government shall ensure that:

(A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-005, *Protection of Information*, and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and N52.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.*

 (c) Indemnification and Creation of Third Party Beneficiary Rights. The contractor agrees:

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

**I-17 N52.227-006 Technical Data or Computer Software Previously Delivered to the Government (OCT 2015)**

The contractor shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the contractor has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract.  This requirement shall be flowed down to all subcontractors at all levels.  The attachment shall identify:

(a) The contract number under which the technical data or computer software was produced;

(b) The contract number under which, and the name and address of the organization to whom, the technical data or computer software was most recently delivered or will be delivered; and

(c) Any limitations on the Government's right to use or disclose the technical data or computer software, including, when applicable, identification of the earliest date the limitations expire.

**I-18 N52.227-007 Rights in Bid or Proposal Information (JUL 2018)**

(a) Definitions. The terms technical data and computer software are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Government Rights prior to Contract Award. By submission of its offer, the offeror agrees that the Government:

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person, including potential evaluators, unless that person has been authorized by the Contracting Officer to receive such information.

(c) Government Rights Subsequent to Contract Award. The contractor agrees:

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the contractor's bid or proposal within the Government.

(2) The Government's right to use, modify, reproduce, release perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(d) Government-Furnished Information. The Government's rights with respect to technical data or computer software contained in the contractor's bid or proposal provided to the contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information Available Without Restrictions. The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party, or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. The contractor shall include this clause in all subcontracts or similar contractual instruments, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

**I-19 N52.227-008 Commercial Technical Data and Computer Software Licensing - Order of Precedence (OCT 2014)**

(a) Upon delivery of any commercial item technical data, computer software, computer software documentation, or any combination thereof, to the Government contained in any CLIN or CDRL, the following provisions shall take precedence over conflicting provisions in any license associated with those items, notwithstanding any provisions in those licenses to the contrary through renewals or extensions, as needed, to this contract:

(1) The Government shall have the right to use, perform, display, or disclose that commercial item technical data, in whole or in part, within the Government.

(2) The Government may not, without the written permission of the Licensor, release or disclose the commercial item technical data and commercial computer software outside the Government, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release, or disclose such data and software or authorize the use or reproduction of such data and software by persons outside the Government (including their subcontractors) to perform their respective contract(s) as identified in N52.209-006 in Section I.

(3) The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those supporting the TBD contract at any time, and its exercise of that right shall not entitle the Licensor to an equitable adjustment or a modification of any other terms and conditions of this contract.

(4) The duration of this license shall be, at a minimum, for the period of performance of this contract (including options, if exercised) unless the license specifies a longer period.

(5) License rights related to technical data described in, and granted to the U.S. Government under clause N52.227-001 shall apply to all such technical data associated with delivered computer software including, but not limited to, users manuals, installation instructions, and operating instructions.

(6) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the License shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(7) By law, the U.S. Government cannot enter into any indemnification agreement where the Governments liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this License shall be void.

(8) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.

(9) Subject to the security requirements set forth in this contract, and upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(10) The items provided hereunder may be installed and used at any U.S. Government installation worldwide at which TBD equipment and/or software is located consistent with the provisions of the contract between the U.S. Government and the Licensee.

(11) Under no circumstances shall terms of the License or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(12) The Licensor shall comply with, and all delivered items shall conform to, all applicable Government security/classification rules and regulations applicable to this agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense Contract Security Classification Specification).

(13) The Licensor understands that the ultimate purpose of the Licensee entering into this License with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. 2281, 42 U.S.C. 14712). Accordingly, should the U.S. Government use, release or disclose the items described in this License in a manner inconsistent with the terms of this License, the U.S. Government shall not be required to de-install and stop using those items or return such items to the Licensee, and the Licensor's remedy will be limited to monetary damages.

(14) In the event of inconsistencies between the License and Federal law, Federal law shall apply.

(15) The Government shall not be required to comply with the terms and conditions of any License that is inconsistent with any applicable laws, regulations, or policies pursuant to export controlled items.

(16) Any claim the Licensee files with the U.S. Government on behalf of the Licensor, and any claim the U.S. Government files with the Licensor, shall be submitted within the period specified in FAR 52.233-01 (Disputes).

(b) Subcontractor Flow-down. The contractor (Licensee) shall include the following clause in any agreement between it and its subcontractors (Licensors) that require the delivery of commercial item technical data, computer software, or computer software documentation, and this clause shall be in effect during the period of performance of this contract or into perpetuity for perpetual licenses:

This Addendum is entered into between \_\_\_\_\_\_\_\_ (Licensee) and \_\_\_\_\_\_\_ (Licensor) and relates to the commercial item technical data, computer software, or computer software documentation (Items) licensed to the Licensee by the Licensor through the Licensees License Agreement (Agreement), and this Addendum is incorporated by reference into the Agreement. The Addendum terms will come into effect if and when the Agreement is transferred to the Government. All references to such Items shall include all software updates (e.g., software maintenance patches, version changes, new releases) and future substitutions made by the Licensor. Upon delivery of that/those Items, Licensor and Licensee agree that the following provisions in this Addendum shall take precedence over conflicting provisions, if any, in the Agreement notwithstanding any provisions in the Agreement to the contrary:

(1) License rights related to technical data granted to the U.S. Government under clause N52.227-001(b)(1) shall apply to all technical data associated with delivered computer software including, but not limited to, users manuals, installation instructions, and operating instructions.

(2) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the Agreement shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(3) By law, the U.S. Government cannot enter into any indemnification agreement where the Governments liability is indefinite, indeterminate, unlimited, and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this Agreement shall be void.

(4) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.

(5) Upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(6) The Items provided hereunder may be installed and used at any U.S. Government installation worldwide consistent with the provisions of the contract between the U.S. Government and the Licensee (e.g., limitations on number of executing instances of software, number of users, other processing volume limitations).

(7) Under no circumstances shall terms of the Agreement or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(8) Licensor shall comply with, and all delivered Items shall conform to, all applicable Government security/classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD Form 254 (Department of Defense, Contract Security Classification Specification).

(9) Licensor understands that the ultimate purpose of the Licensee entering into this Agreement with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. 2281, 42 U.S.C. 14712). Accordingly, should the U.S. Government use, release, or disclose the Items described in this Agreement in a manner inconsistent with the terms of this Agreement, the U.S. Government shall not be required to uninstall and stop using those Items or return such Items to the Licensee.

(10) In the event of inconsistencies between the Agreement and Federal law, Federal law shall apply.

**I-20 N52.227-009 Deferred Delivery of Technical Data or Computer Software (MAY 2005)**

The Government may identify technical data or computer software (as defined in clause N52.227-001 or N52.227-002) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to Section J of this contract titled Deferred Delivery. The Government may require delivery of the items identified for deferred delivery up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause will be flowed down to all subcontractors.

**I-21 N52.227-010 Deferred Ordering of Technical Data or Computer Software (SEP 2013)**

(a) The Government may defer ordering technical data, computer software (as defined in clause N52.227-001 or N52.227-002), or other information not easily categorized (as defined in clause N52.227-002(d) and mutually agreed to by the contractual parties) that is generated during the performance of this contract for a period of up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later.

(b) The categories of technical data, computer software, and other information not easily categorized that is subject to deferred ordering under this clause may be:

(1) Incorporated into the contract in the Contract Data Requirements List item that describes the Data Accession List attached to the contract; or

(2) Identified by the Government via a process agreed to by the parties and incorporated as an attachment to the contract in Section J prior to contract award.

(c) When the technical data, computer software, or other information not easily categorized is ordered, the contractor shall be reasonably compensated for converting the data or computer software into the prescribed form, for reproduction, and for delivery.

(d) The Government's rights to use said technical data and computer software shall be pursuant to the *Rights in Technical Data and Computer Software* clause(s) of this contract (N52.227-001 and N52.227-002).

(e) This clause shall be flowed down to all subcontractors.

(End of clause)

**I-22 N52.227-011 Technical Data and Computer Software: Withholding of Payment (NOV 2007)**

(a) If technical data and computer software (as defined in clause N52.227-002) specified to be delivered under this contract are not delivered within the time specified by this contract, or are deficient upon delivery (including having unauthorized restrictive markings), the Contracting Officer shall, until such data and computer software are accepted by the Government, withhold all subsequent payments to the contractor until a reserve is established totaling 3 percent of the total contract price or $5 million, whichever is less. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contracting Officer determines that the contractor's failure to make timely delivery or to deliver the technical data or computer software without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) The withholding of any amount or subsequent payment to the contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. Use of this clause constitutes a determination by the Contracting Officer that the limitation established by FAR Clause 52.232-9, *Limitation on Withholding of Payments*, shall not apply to the amount withheld under this clause.

**I-23 N52.227-016 Patents--Reporting of Subject Inventions (APR 2009)**

The contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the contractor has retained title.

(d) Upon request, the contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

**I-24 N52.227-019 Pre-award and Post-award Identification and Assertion of Restrictions on Technical Data Pertaining to a Commercial Item and Commercial Computer Software (FEB 2020)**

(a) The terms used in this clause are defined in NAM Part 27.

(b) Identification and Assertion of Restrictions. The offeror shall not deliver or otherwise provide to the Government any commercial technical data or commercial computer software with restrictive markings (or otherwise subject to restrictions on access, use, modification, reproduction, release, performance, display, or disclosure) unless the commercial technical data or commercial computer software are identified in accordance with the following requirements:

(1) Pre-Award. The offeror (including its subcontractors or suppliers, or potential subcontractors or suppliers, at any tier) shall identify all commercial technical data and commercial computer software that it proposes will be delivered or otherwise provided (including all option CLINs, if exercised) with less than Unlimited Rights, to the extent known at the time an offer is submitted to the Government:

(i) The offeror shall also identify and assert any restrictions for all commercial computer software, including open source software, and commercial technical data (i.e., technical data pertaining to a commercial item) using the format provided in paragraph (e) below.

(ii) An offeror's failure to submit, adequately complete, or sign the notification and identification required by paragraph (e) of this clause with its offer will constitute a minor informality. If assertions are required and the offeror does not correct such informality within the time prescribed by the Contracting Officer, the offer may be ineligible for award.

(iii) If the offeror is awarded a contract, the assertions identified in this clause shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion. Updates to the Commercial Assertions List shall be included in an amended attachment.

(2) Post-Award. In addition to the pre-award assertions made in the attachment pursuant to paragraph (b)(1)(iii), other assertions on technical data pertaining to a commercial item and commercial computer software may be identified after award when based on new information or inadvertent omissions, unless the inadvertent omissions would have materially affected the source selection decision. Such identifications and assertions shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data/computer software, following the same requirements and using the same table format for pre-award assertions found in paragraph (e), and signed by an official authorized to contractually obligate the contractor.

(c) Copies of Commercial Licenses. The offeror shall provide copies of all commercial licenses to commercial technical data or commercial computer software which the offeror proposes to deliver, including third party licenses, and these shall be submitted as an attachment to its offer. The Government will review the licenses to ensure that the licenses terms are consistent with federal procurement law and meet the Government’s end user needs. All such commercial licenses will be made part of an attachment to the contract at award. If the offeror intends to deliver commercial technical data under the terms of clause N52.227-001, instead of its own commercial license, the offeror shall list clause N52.227-001 in the table at paragraph (e) below.

(1) Typical licensing terms that are inconsistent with federal procurement law can include jurisdiction and venue (must be Federal law and venue), indemnification of vendor and automatic renewals (Anti-Deficiency Act violation), order of precedence (the contract takes precedence over license), dispute resolution (must be in accordance with Disputes clause in the contract), to include termination clauses that allow the vendor to unilaterally (and often automatically) terminate the license if the Government is alleged to have breached it, and injunctive relief (no injunctive relief against the Government is available, per 28 USC §1498(b)). This list is not all-inclusive, but is intended to convey the most common license terms that are problematic to the Government, and must be resolved prior to award. See clause N52.227-008, *Commercial Technical Data and Computer Software Licensing - Order of Precedence*, for additional clarification.

(2) With respect to the Government program user needs for technical data and computer software delivered under this contract, the Government will need to distribute the commercial computer software and technical data outside of Government for any purpose where the Government is a party, but only under conditions that prohibit any further distribution by the third party recipient. To accomplish the distribution, the Government intends use non-disclosure agreements discussed in clauses N52.209-005, *Protection of Information*, and N52.209-008, *Support Contractor Corporate Non-Disclosure Agreement*. Additional non-disclosure agreements deemed necessary by the owner of the licensed technical data or computer software shall be submitted to the Contracting Officer for review prior to execution.

(3) If the offeror intends to use third party commercial technical data or commercial computer software in the performance of the contract, and then deliver the commercial technical data or computer software to the Government at the conclusion of the contract, the offeror should list such commercial technical data or computer software in the table at paragraph (e). The offeror shall also ensure that the applicable license is transferable to the Government. The Government criteria for software license review will be the same for third party vendors as for the offeror’s commercial computer software as described in paragraph (c)(1) and (c)(2) of this clause once the Government becomes the end user. The offeror should accomplish the actions in the paragraph prior to award of the contract.

(d) (U) Contractor Use of Open Source Software (OSS). The Government treats OSS as a category of commercial computer software. If the contractor proposes to use OSS while performing under the contract, the contractor shall follow the same rules as prescribed in this clause for commercial computer software, and address the requirements in paragraphs (d)(1) and (d)(2) below. OSS is often licensed under terms that require a user to make user's modifications to the OSS or any software that the user combines with the OSS freely available in source code form pursuant to distribution obligations in the license.

(1) In cases where the Contractor proposes to use OSS while performing under a Government contract, regardless of whether the OSS is delivered, the Contractor shall not create, or purport to create, any Government distribution obligation with respect to Government computer software deliverables.

(2) Prior to using any OSS, the Contractor shall additionally evaluate each license and confirm that each of the following requirements is satisfied:

(i) The OSS license shall be compatible with all licenses for other commercial computer software that are or will be linked to, adapted to, integrated, combined or merged with the particular OSS;

(ii) The OSS license shall not impose a future Government distribution obligation;

(iii) The OSS license shall not contain licensing terms that are inconsistent with federal procurement law (see paragraph (c)(1) of this clause); and

(iv) Contractor's cost to comply with this requirement presents no additional cost to the Government.

(3) If, as a result of the Contractor's evaluation, the Contractor satisfies all of the requirements in paragraphs (d)(2)(i) through (d)(2)(iv) above, then the Contractor shall provide a written certification of the above findings to the Government Contracting Officer stating that the Contractor has evaluated the OSS use and the OSS license, and made each determination required in paragraphs (d)(2)(i) through (d)(2)(iv) above. The Contractor shall request permission from the Government Contracting Officer to use the proposed OSS. This notification shall also include all information regarding the identification and proposed use(s) of the OSS in the format required by paragraph (e) below.

(4) If the Contractor is unable to satisfy all of the requirements in paragraphs (d)(2)(i) through (d)(2)(iv) above for a particular commercial computer software license, then the Contractor may not use the OSS covered by the particular license without prior approval by the Contracting Officer. If the Contractor wants to use the OSS for which the requirements of paragraphs (d)(2)(i) through (d)(2)(iv) are not satisfied, the Contractor shall request approval to use the otherwise prohibited subject OSS from the Contracting Officer by providing a written notification that includes all information regarding the identification and proposed use(s) of the OSS in the format required by paragraph (e) below.

(e) Table Format for Identification and Assertion of Restrictions. Commercial technical data and commercial computer software restrictions shall be identified as follows:

**Identification of Commercial Technical Data/Computer Software (Including Open Source Software) Use and Modifications (Commercial Assertions List)**

|  |  |  |  |
| --- | --- | --- | --- |
| Commercial Technical Data/Computer Software Title, Version #, and License\* | Technical Use/  Implementing Approach  \*\* | If OSS, Was OSS Modified by Contractor?  \*\*\* | Name of Contractor Delivering Commercial Software\*\*\*\* |
|  |  |  |  |

\* For commercial technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation, identify the computer software or computer software documentation. The complete title and version number of the computer software should be listed. If OSS, list the license and version number. If a version number is not available, provide some other means of identification (e.g., checksum data). If commercial technical data is being delivered under the terms of clause N52.227-001, then clause N52.227-001 should be listed. If the OSS was downloaded from a website, the website address should also be provided but an actual copy of the license shall still be provided as set forth in paragraph (d). Enter “None” if all commercial technical data or commercial computer software will be submitted without restrictions.

\*\* The functionality of the commercial computer software should be described, as well as where it is being used within the larger computer software deliverable, if applicable.

\*\*\* If OSS is being used, the offeror should state whether it has modified the OSS or plans to do so.

\*\*\*\* Corporation, individual, or other person as appropriate.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of identification and assertion)

(End of clause)

**I-25 N52.239-002 Intelligence Community Information Technology Enterprise Implementation (NOV 2018)**

(a) The NRO is transitioning future and legacy systems to the Intelligence Community Information Technology Enterprise (IC ITE).  The emergence of IC ITE services such as Commercial Cloud Services (C2S) removes the dependency of NRO procurements to include unique hardware or to plan location-specific installations.  IC ITE services will instead offer environments for development, testing, and operations of future capabilities as software applications rather than stand-alone systems.

(b) Therefore, as specified in the statement of work/statement of objectives, the contractor shall develop and deliver NRO software as applications on government-provided infrastructure in accordance with published IC ITE standards and service catalogs.  The contractor shall not provide capabilities which duplicate any IC ITE or NRO enterprise service.

(End of clause)

**I-26 N52.244-002 Subcontract Reporting, Monitoring, Consent, and Notification (MAY 2019)**

(a) Definition. As used in this clause:

*Subcontrac*t means any contract or contractual action entered into by the prime contractor or a subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under this contract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders. For purposes of consent, the definition of *subcontract* in FAR 52.244-2 applies.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies, materials, equipment, or services of any kind under this contract or a subcontract entered into in connection with this contract, regardless of dollar value.

(b) Flow-Down. The requirements of this clause must be included in all first-tier subcontracts directly chargeable to this contract, except for those subcontracts with US-owned companies to provide only unclassified commercial products and/or services on a fixed-price basis.

(c) Reporting. The prime contractor shall submit an annual report by 30 June each year providing the data specified below for all first- and second-tier subcontracts directly chargeable to this contract that were awarded and/or modified within the previous twelve months. Individual fixed-price subcontracts under $5,000 with US-owned companies to provide unclassified commercial products and/or services that will not be incorporated into a contract deliverable (e.g., office supplies, travel, postage) need not be reported. Reports will be submitted electronically through the FOCUS Web Portal on the Contractor Wide-Area Network (CWAN). Prime contractors without CWAN access will prepare their reports using the Excel Add-in Tool available on the NRO Acquisition Research Center (ARC) website, and submit via email. Each subcontract report must include the following information in the format specified in FOCUS and in the Excel Add-in Tool:

- Prime Contract Number or Task Order Number

- Subcontractor Tier

- Is the Subcontract Classified?

- Relationship Between Prime Contractor and Subcontractor

- Subcontractor Business Name

- Subcontractor Street Address

- Subcontractor City

- Subcontractor State

- Subcontractor Zip Code

- Subcontractor Country

- Subcontractor Data Universal Numbering System (DUNS) Number

- Subcontractor Contractor and Government Entity (CAGE) Code

- Subcontractor Business Type

- Is the Subcontractor a Woman-owned Business?

- Is the Subcontractor a Veteran-owned Business?

- Is the Subcontractor a Service-disabled Veteran-owned Business?

- Is the Subcontractor a HUBZone Small Business?

- Subcontractor Country of Ownership

- DUNS Number of Company Awarding Subcontract

- Subcontractor’s Parent Company Business Name

- Subcontract or Purchase Order Number

- Subcontract Value (Cumulative to Date)

- Subcontract Period of Performance – Start Date

- Subcontract Period of Performance – End Date

- Subcontract Place of Performance – City

- Subcontract Place of Performance – State

- Subcontract Place of Performance – Country

- Brief Description of Subcontract Effort

- Primary Subcontract Type

- Method Used to Select Subcontractor (Competitive or Sole-Source)

(d) Monitoring. The parties agree that the Government shall have the right to:

(1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;

(2) Observe any subcontractor test, verification, validation, shipment, or similar event;

(3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly agreed to by the prime contractor and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend; and

(4) Review and agree to the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices or satisfactory performance.

(e) Consent.

(1) All consent to subcontract requirements in FAR Clause 52.244-2 apply to this contract. In addition, the contractor shall obtain the Contracting Officer's written consent before awarding any subcontract with a value over $50 million, or that exceeds $3 million or five percent of prime contract value, whichever is less, to a company listed on the NRO Subcontract Consent Registry. The Registry is posted on the classified NRO Acquisition Research Center website (https://acq.nro.ic.gov) under NAM/Consent. Contractors without access to this website can contact the Contracting Officer to confirm which companies are listed.

(2) Requests for consent to subcontract shall be submitted in writing to the Contracting Officer, and provide, at a minimum, the information specified FAR 52.244-2(e).

(f) Notification. The prime contractor shall provide written notification to the Contracting Officer and COTR when a subcontract is expected to exceed the negotiated cost baseline by 15 percent.

(g) Privity. Government collection of subcontract information, surveillance of subcontractor performance, and consent to subcontract do not relieve the contractor of any responsibility for the effective management of all subcontracts and for the overall success of this contract. Actions taken under the authority of this clause do not establish privity of contract between the Government and subcontractors under this contract. The Government will not provide direction to or request action by any subcontractor except through the prime. However, all subcontractors must respond to direct requests for information from the Government, either directly or through the prime.

(h) Security. The Government reserves the right to direct the removal of any subcontractor under this contract on the basis of Government security concerns. The contractor shall be responsible for any lack of due diligence or negligence in the selection of a subcontractor, and will not be entitled to an equitable adjustment if the Contracting Officer determines that the Government's need to remove the contractor for security reasons is the fault of the contractor or subcontractor.

**I-27 N52.245-002 No Contract Accountable Government Property (NOV 2017)**

(a) This contract shall be performed and completed without any contract-accountable Government property.  The contractor shall make no requests for Government property except when the Government may accrue significant tangible benefits by granting such a request.  The contractor shall not accept, request, or pursue contract-accountable Government property from anyone other than the Contracting Officer.

(b) The contractor may use Government property in their possession but accountable to another NRO or non-NRO contract for the performance of this contract if approved in writing by the Contracting Officer of the accountable contract.  Such use shall be on a rent-free basis, shall not interfere with performance of the accountable contract, and shall comply with the terms and conditions specified in that contract and in the accountable Contracting Officer’s approval letter.  This paragraph does not apply to Government-furnished material.

(c) If applicable, the Government Property List in Section J may identify Government-accountable (site) property available for the performance of this effort at Government facilities.   While the Government retains ultimate accountability for such property, the contractor will be responsible for managing it in compliance with the NRO Government Property Manual (GPM).  The requirements in FAR 52.245-1 and NAM N52.245-001 do not apply to the management of Government-accountable property.

(End of Clause)

**PART III - LIST OF DOCUMENTS/EXHIBITS AND OTHER ATTACHMENTS**

**SECTION J - LIST OF ATTACHMENTS**

**J-1 Incorporation Of Attachments And Exhibits**

The Attachments and/or Exhibits listed below are incorporated herein and made part hereof:

| **Attachment**  **Number** |  | **Description** |  | **Date** |  | **No. Pages** |
| --- | --- | --- | --- | --- | --- | --- |
|  |  | NOT APPLICABLE |  |  |  |  |

**PART IV - REPRESENTATIONS AND INSTRUCTIONS**

**SECTION K - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS**

**K-1 N52.252-002 Clauses Incorporated by Reference (OCT 2015)**

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. The full text of each clause may also be accessed electronically at  https://www.acquisition.gov and https://acq.westfields.net/nro/acquisition-manual.

| **Number** |  | **Title** |
| --- | --- | --- |
| 52.203-11 |  | Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007) |
| 52.203-18 |  | Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation (JAN 2017) |
| 52.209-2 |  | Prohibition on Contracting With Inverted Domestic Corporations-Representation (NOV 2015) |
| 52.222-22 |  | Previous Contracts and Compliance Reports (FEB 1999) |
| 52.222-38 |  | Compliance with Veterans' Employment Reporting Requirements (FEB 2016) |
| N52.209-001 |  | Disclosure of Ownership or Control by the Government of a Country That Is a State Sponsor of Terrorism (FEB 2016) |
| N52.245-003 |  | Use of Government-Owned Property (NOV 2017) |

**K-2 52.204-8 Annual Representations and Certifications (SEP 2021)**

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is .

(2) The small business size standard is .

(3) 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—

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) 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) (1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

[ ] (i) Paragraph (d) applies.

[ ] (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c) (1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed $150,000.

(iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation. This provision applies to all solicitations.

(iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the clause at 52.204-7, System for Award Management.

(v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) 52.204-26, Covered Telecommunications Equipment or Services—Representation. This provision applies to all solicitations.

(vii) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations- Representation.

(viii) 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) 52.214-14, Place of Performance Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(xi) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

(xiii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xiiv) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xvi) 52.222-38, Compliance with Veterans Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xvii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xviii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA-designated items.

(xix) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. This provision applies to solicitations that include the clause at 52.204-7.)

(xx) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xxi) 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at 52.225-3.

(A) If the acquisition value is less than $25,000, the basic provision applies.

(B) If the acquisition value is $25,000 or more but is less than $50,000, the provision with its Alternate I applies.

(C) If the acquisition value is $50,000 or more but is less than $83,099, the provision with its Alternate II applies.

(D) If the acquisition value is $83,099 or more but is less than $100,000, the provision with its Alternate III applies.

(xxii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxiii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan - Certification. This provision applies to all solicitations.

(xxiv) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[*Contracting Officer check as appropriate*.]

X (i) 52.204-17, Ownership or Control of Offeror.

X (ii) 52.204-20, Predecessor of Offeror.

X (iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

X (iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification.

X (v) 52.222-52, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

X (vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

X (vii) 52.227-6, Royalty Information.

(A) Basic.

 X (B) Alternate I.

X (viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically in SAM accessed through https://www.sam.gov. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

**FAR Clause No.             Title                Date                Change**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

**K-3 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (OCT 2020)**

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

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

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition*.

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

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

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

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

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

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

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

(d) *Representations*. The Offeror represents that—

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

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

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

(e) *Disclosures*.

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

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

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

(i) For covered equipment—

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

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

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

(ii) For covered services—

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

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

(End of provision)

**K-4 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) *Representation*.

(1) 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.

(End of provision)

**K-5 52.209-5 Certification Regarding Responsibility Matters (AUG 2020)**

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that

(i) The Offeror and/or any of its Principals—

(A) Are \_\_\_ are not \_\_\_ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have \_\_\_ have not \_\_\_, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks have, the offeror shall also see 52.2097, if included in this solicitation); and

(C) Are \_\_\_ are not \_\_\_ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(D) Have \_\_\_, have not \_\_\_, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(*1*) Federal taxes are considered delinquent if both of the following criteria apply:

(*i*) *The tax liability is finally determined*. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(*ii*) *The taxpayer is delinquent in making payment*. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(*2*) Examples. (*i*) The taxpayer has received a statutory notice of deficiency, under I.R.C. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(*ii*) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(*iii*) The taxpayer has entered into an installment agreement pursuant to I.R.C. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(*iv*) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has \_\_\_ has not \_\_\_, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons 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).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

**K-6 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 (FAPIIS) 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).

**K-7 52.209-11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law (FEB 2016)**

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is [ ] is not [ ] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is [ ] is not [ ] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of provision)

**K-8 52.225-2 Buy American Certificate (FEB 2021)**

(a) (1) The Offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product.

(2) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(3) The terms "domestic end product," "end product," and "foreign end product" are defined in the clause of this solicitation entitled "Buy American—Supplies."

(b) Foreign End Products:

Line item No. Country of origin

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of part 25 of the Federal Acquisition Regulation.

**K-9 52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan - Certification.**

(a) *Definitions*. As used in this provision-*Business operations* means engaging in commerce in any form, including by 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.

*Marginalized populations of Sudan* means-

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) (50 U.S.C. 1701 note); and (2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

*Restricted business operations* means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174).

Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

(b) *Certification*. By submission of its offer, the offeror certifies that it does not conduct any restricted business operations in Sudan.

**K-10 52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications (JUN 2020)**

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

*Person*—

(1) Means-

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

*Sensitive technology—*

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with Federal Acquisition Regulation (FAR) 25.703-4, by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds the threshold at FAR 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx).

(d) *Exception for trade agreements*. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if—

(1) This solicitation includes a trade agreements notice or certification (e.g., 52.225-4, 52.225-6, 52.225-12, 52.225-24, or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

**K-11 N52.232-004 Contract Payment Information (AUG 2014)**

(a) Definitions.

(1) *Common parent*, as used in this provision, means the corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

(2) *Taxpayer Identification Number (TIN)*, as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(3) *Women-owned business concern,* as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) The offeror is required, as a condition to any payment under this contract, to provide the Government with the electronic funds transfer (EFT) information described in paragraph (e). All information requested in paragraphs (e) through (k) below must be submitted to the Contracting Officer with the offer.

(c) All offerors must submit the information required by this provision to comply with the debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C.6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(d) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offerors relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offerors TIN.

(e) Electronic Funds Transfer Information.

Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Offeror's Name and Division: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Offeror's Address (Include city, state, and zip code):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Offeror's Data Universal Numbering System (DUNS) number corresponding to the name and address listed above: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Offeror's Commercial and Government Entity (CAGE) code corresponding to the name and address listed above: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Offeror's Banking Institution: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bank Address (Include city, state, and zip code):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Routing Transit Number (9 digit ABA number; no wire transfer numbers): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Account Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Type of Account: [ ] Checking [ ] Savings

(f) Taxpayer Identification Number (TIN). Individual US citizens enter their social security number (SSN); other US persons enter their employer identification number (EIN); and resident aliens enter their individual taxpayer identification number (ITIN).

TIN: [ ] EIN: \_\_\_\_\_\_\_\_\_\_\_\_\_ [ ] SSN: \_\_\_\_\_\_\_\_\_\_\_\_\_ [ ] ITIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] TIN has been applied for.

[ ] TIN is not required because:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States, and does not have an office or place of business or a fiscal paying agent in the United States.

[ ] Offeror is an agency or instrumentality of a foreign government.

[ ] Offeror is an agency or instrumentality of the Federal Government.

(g) Type of Organization.

[ ] Individual/Sole proprietorship;

[ ] Partnership;

[ ] C Corporation (Not tax-exempt);

[ ] S Corporation (Not tax-exempt);

[ ] Limited Liability Company (Enter tax classification code as follows: C = C Corporation, S = S Corporation, P = Partnership: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] Corporate entity (tax-exempt)

[ ] Government entity (Federal, state, or local);

[ ] Foreign government;

[ ] International organization per 26 CFR 1.6049-4;

[ ] Trust/Estate

[ ] Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(h) Common Parent.

[ ] Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

[ ] Name and TIN of common parent:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (i) Small Business Status.

[ ] Offeror is a small business concern per 13 CFR 121;

[ ] Offeror is not a small business concern.

(j) Business Type.

[ ] Offeror is a minority-owned business;

[ ] Offeror is a woman-owned business.

 (k) Offeror's Certification.

[ ] The number shown on this form is the Offeror's correct taxpayer identification number;

[ ] The Offeror is a US citizen or other US person;

[ ] The Offeror is exempt from Foreign Account Tax Compliance Act (FATCA) reporting;

[ ] Offeror is not subject to backup withholding because Offeror is exempt;

[ ] Offeror is not subject to backup withholding because Offeror has not been notified by the IRS that they are subject to backup withholding as a result of failure to report all interest or dividends;

[ ] Offeror is not subject to backup withholding because the IRS has notified them that they are no longer subject to backup withholding.

The Internal Revenue Service does not require the Offeror's consent to any provision of this document other that the certifications required to avoid backup withholding.

"Under penalties of perjury, I certify that the information listed above is complete and accurate as of this date."

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SECTION L - INSTRS., CONDS., AND NOTICES TO OFFERORS**

**L-1 N52.252-001 Solicitation Provisions Incorporated by Reference (OCT 2015)**

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 full text of each solicitation provision may also be accessed electronically at https://www.acquisition.gov and  https://acq.westfields.net/nro/acquisition-manual.

| **Number** |  | **Title** |
| --- | --- | --- |
| 52.215-1 |  | Instructions to Offerors -- Competitive Acquisition (JAN 2017) |
| N52.215-005 |  | Revisions (JAN 2005) |

**L-2 52.216-1 Type of Contract (APR 1984)**

The Government contemplates award of a **Firm Fixed Price** contract resulting from this solicitation.

**L-3 52.233-2 Service of Protest (SEP 2006)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from **NRO Headquarters**.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

**L-4 Proposal Preparation Instructions**

(U//FOUO) AS&T FY21-22 OPEN BAA FRAMEWORK - ARCHITECTURE AFTER NEXT

**SECTION M - EVALUATION FACTORS FOR AWARD**

**M-1 N52.252-001 Solicitation Provisions Incorporated by Reference (OCT 2015)**

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 full text of each solicitation provision may also be accessed electronically at https://www.acquisition.gov and https://acq.westfields.net/nro/acquisition-manual.

| **Number** |  | **Title** |
| --- | --- | --- |
| N52.215-002 |  | Evaluation By Consultants (JAN 2005) |

**M-2 Evaluation Criteria**

(U//FOUO) AS&T FY21-22 OPEN BAA FRAMEWORK - ARCHITECTURE AFTER NEXT