

3.2.2.5-5 Commercial Items - Contract Terms and Conditions Required to Implement Statutes or Executive Orders (August 2002)

(a) The Contractor shall comply with the following clauses, incorporated into this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) Convict Labor (E.O. 11755);

(2) Protest after Award (31 U.S.C 3553).

(b) The Contractor shall comply with the clauses in this paragraph (b) that the contracting officer has incorporated into this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer shall check as appropriate.]

___ (1) Restrictions on Subcontractor Sales to the TSA, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

___ (2) Notice of HUBZone Small Business Set-Aside (August 2002).

___ (3) Notice of Price Evaluation Preference for HUBZone Small Business Concerns (August 2002) (if the offeror elects to waive the preference, it shall so indicate in its offer).

___ (4) (i) Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

___ (ii) Alternate I

___ (iii) Alternate II

___ (5) Use of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

___ (6) Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).

___ (7) Limitations on Subcontracting (15 U.S.C. 637(a)(14)).

___ (8) (i) 5Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

___ (ii) Alternate I .

___ (9) Small Disadvantaged Business Participation Program- Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

___ (10) Small Disadvantaged Business Participation Program- Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

___ (11)Prohibition of Segregated Facilities (August 2002).

___ (12) Equal Opportunity (E.O. 11246).

___ (13) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

___ (14) Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

___ (15) Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

___ (16) Child Labor-Cooperation with Authorities and Remedies (E.O. 13126).

___ (17) Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).

___ (i) Alternate I

___ (18) Buy American Act--Supplies (41 U.S.C. 10a-10d).

___ (19) Buy American Act - North American Free Trade Agreement - Israeli Trade Act (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

___ (ii) Alternate I

___ (iii) Alternate II

___ (20) Trade Agreements (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

___ (21) Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

___ (22) Sanctioned European Union Country End Products (E.O. 12849).

___ (23) Sanctioned European Union Country Services (E.O. 12849).

___ (24) Payment by Electronic Funds Transfer-Central Contractor Registration (31 U.S.C. 3332).

___ (25) Payment by Electronic Funds Transfer-Other Than Central Contractor Registration (31 U.S.C. 3332).

___ (26) Payment by Third Party (31 U.S.C. 3332).

___ (27) Privacy or Security Safeguards (5 U.S.C. 552a).

___ (28) Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

___ (i) Alternate I .

(c) The Contractor shall comply with the clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated are incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components: *[Contracting Officer check as appropriate.]*

___ (1) Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

___ (2) Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (3) Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (4) Fair Labor Standards Act and Service Contract Act -- Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (5) SCA Minimum Wages and Fringe Benefits Applicable to
Successor Contract Pursuant to Predecessor Contractor Collective
Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

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

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

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

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

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any clause, other than those listed below (and as may be required by an addenda to this paragraph to

establish the reasonableness of prices), in a subcontract for commercial items or commercial components --

- (1) Equal Opportunity (E.O. 11246);
- (2) Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);
- (3) Affirmative Action for Workers with Disabilities (29 U.S.C. 793);
- (4) Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and
- (5) Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

(End of Clause)

PRESCRIPTION:

Insert in all solicitations and contracts above the micro-purchase threshold and below the Simplified Acquisition Threshold, unless the Commercial Item Test Program applies.