

## **CONTRACT CLAUSES**

### **REGULATIONS GOVERNING PROCUREMENT**

The U.S. Government Printing Office (GPO) is a legislative branch of the United States Government. Accordingly, the Federal Acquisition Regulations (FAR) is inapplicable to this, and all GPO procurements. However, the text of certain provisions of the FAR, as contained in the Code of Federal Regulations, are referenced in this solicitation. The bidder should note that only those provisions of the FAR which are specifically incorporated by reference into this solicitation, are applicable.

### **NOTICE LISTING CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The following contract clauses pertinent to this section are hereby incorporated by reference in accordance with the FAR clause at "52.252-2 CLAUSE INCORPORATED BY REFERENCE (FEB 1998) Section I of this contract.

The following provisions are incorporated 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.

FAR changes apply to solicitation issued on or after the effective date of the change.

**Also, the full text of a clause may be accessed electronically at this/these address(es)**

[www.arnet.gov/far](http://www.arnet.gov/far)  
[www.gpo.gov](http://www.gpo.gov)

<b>NUMBER</b>	<b>DATE</b>	<b>TITLE</b>
52.202-1	May 2001	Definitions Regulations Governing Procurement
52.203-3	Apr 1984	Gratuities
52.203-5	Apr 1984	Covenant Against Contingent Fees
52.203-6	Jul 1995	Restrictions on Subcontractor Sales to the Government American Made Products
52.203-7	Jul 1995	Anti-Kickback Procedures
52.203-8	Jan 1999	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
52.203-10	Jan 1997	Price or Fee Adjustment for Illegal or Improper Activity
52.203-12	Jun 1997	Limitation on Payments to Influence Certain Federal Transactions
52.209-6	Jul 1995	Protecting the Government's Interest when Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.214-29	Jan 1996	Order of Precedence--Sealed Bidding
52.215-1	May 2001	Instruction to Offerors - Competitive Acquisition
52.219-8	Oct 2000	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
52.222-1	Feb 1997	Notice to the Government of Labor Disputes
52.222-3	Aug 1996	Convict Labor
52.222-4	Sep 2000	Contract Work Hours and Safety Standards Act--Overtime Compensation
52.222-20	Dec 1996	Walsh-Healy Public Contracts Act
52.222-26	Feb 1999	Equal Opportunity
52.222-35	Apr 1998	Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222-36	Jun 1998	Affirmative Action for Handicapped Workers
52.222-37	Jan 1999	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.223-3	Jan 1997	Hazardous Material Identification and Material Safety Data
52.225-3	Feb 2000	Buy American Act-Supplies
52.227-1	Jul 1995	Authorization and Consent
52.227-2	Aug 1996	Notice and Assistance Regarding Patent and Copyright Infringement
52.227-3	Apr 1984	Patent Indemnity
52.229-3	Jan 1991	Federal, State, and Local Taxes
52.229-5	Apr 1984	Taxes--Contracts Performed in U.S. Possessions or Puerto Rico
52.232-1	Apr 1984	Payments
52.232-11	Apr 1984	Extras
52.232-17.1	Jun 1996	Interest
52.232-23	Jan 1986	Assignment of Claims
52.233-3	Aug 1996	Protest After Award
52.242-13	Jul 1995	Bankruptcy
52.243-1	Aug 1997	Changes--Fixed Price
52.246-2	Aug 1996	Inspection of Supplies--Fixed Price

<b>NUMBER</b>	<b>DATE</b>	<b>TITLE</b>
52.246-16	Apr 1984	Responsibility for Supplies
52.247-64	Jun 2000	Preference for Privately Owned U.S. Flag Commercial Vessels
52.249-1	Apr 1984	Termination for Convenience of the Government (Fixed Price) (Short Form)
52.249-2	Sep 1996	Termination for Convenience of the Government(Fixed Price)
52.249-8	Apr 1984	Default (Fixed-Price Supply and Service)
552-203-70		Restriction on Advertising
552.211-72		References to Specifications in Drawings
552.210-74		Brand Name or Equal
552.211-73		Marking
552.210-76		Charges for Marking
552.211-75		Preservation, Packaging, and Packing
552.211-77		Packing List
552.211-82		Notice of Shipment
552-223-72		Nonconforming Hazardous Materials
552.243-70		Pricing of Adjustments
552.252-6		Authorized Deviations or Variations in Clauses

**CONTRACT CLAUSES (Continued)**

**DISPUTES (VARIATION)**

Except as otherwise provided in the contract, any dispute concerning a question of fact related to the contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall make his/her decision in writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 90 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Public Printer. The decision of the Public Printer, or a duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this article, the Contractor shall be afforded an opportunity to be heard and to bid evidence in support of his/her appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

This "Disputes" article does not preclude consideration of law questions in connection with decisions provided for in the paragraph above: Provided, that nothing in the contract shall be construed as making final the decision of any administration official, representative, or board on a question of law.

**SERVICE OF PROTEST (VARIATION)**

(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 General Accounting Office (GAO) shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Director, Materials Management Service, U.S. GPO, (MM), Washington, DC 20401.

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

**PROTEST AFTER AWARD (AUG 1989)**

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either-

(1) Cancel the stop-work; or

(2) Terminate the work covered by the order as provided in the Default or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the request at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's right to terminate this contract at anytime are not affected by action taken under this clause.

**REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS**

1. SMALL BUSINESS CONCERN REPRESENTATION
2. TAXPAYER INFORMATION
3. WALSH-HEALY PUBLIC CONTRACTS ACT REPRESENTATION
4. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS
5. AFFIRMATIVE ACTION COMPLIANCE
6. PROHIBITION OF SEGRATED FACILITIES
7. NOTICE OF TOTAL HUBZONE SET-ASIDE
8. EQUAL LOW BIDS
9. PLACE OF PERFORMANCE
10. CERTIFICATE REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND OTHER RESPONSIBILITY MATTERS
11. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
12. CONTINGENT FEE REPRESENTATION AND AGREEMENT
13. CLEAN AIR & WATER CERTIFICATION
14. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
15. ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATE
16. NOTICE OF PARTICIPATION BY ORGANIZATIONS FOR THE HANDICAPPED

Representations and Certifications	Reference
Name and Address of Offeror	Date of Offer

"SOLICITATION" MEANS "INVITATION FOR BIDS" IN SEALED BIDDING AND "REQUEST FOR PROPOSAL" OR "REQUEST FOR QUOTATION" IN NEGOTIATION.

"OFFER" MEANS "BID" IN SEALED BIDDING AND "PROPOSAL" IN NEGOTIATION.

"OFFEROR" MEANS THE PERSON OR FIRM SUBMITTING THE OFFER.

**THE OFFEROR MAKES THE FOLLOWING REPRESENTATIONS AND CERTIFICATIONS AS A PART OF THE OFFER IDENTIFIED ABOVE. (CHECK APPROPRIATE CIRCLE AND FILL IN BLANKS.)**

**1. 552.219-1 SMALL BUSINESS CONCERN REPRESENTATION (MAY 1991) (DEVIATION FAR 52.219-1)**

(a) Representation. The offeror represents and certifies as part of its offer that it  is or  is not a small business concern.

(b) Definition. Small business concern, as used in this provision, 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 and size standards in this solicitation.

© Notice. Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or, any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall (1) be punished by imposition of a fine, imprisonment, or both; (2) be subject to administrative remedies including suspension and debarment; and (3) be ineligible for participation in programs conducted under the authority of the Act.

**2. 52.204-3 TAXPAYER IDENTIFICATION (Oct 1998)**

(a) *Definitions.*

"Common parent," as used in this provision, means that 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.

"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.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with 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 Federal Acquisition Regulation (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.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's 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 offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

\* TIN: \_\_\_\_\_.

\* 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.

(e) *Type of organization.*

\* Sole proprietorship;

\* Partnership;

\* Corporate entity (not tax-exempt);

\* Corporate entity (tax-exempt);

\* Government entity (Federal, State, or local);

- Foreign government;
- International organization per 26 CFR 1.6049-4;

\* Other \_\_\_\_\_.

(f) *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 \_\_\_\_\_

**ITEMS 3, 4, 5, AND 6 NEED TO BE CHECKED ONLY IF OFFER EXCEEDS \$10,000 IN AMOUNT.**

**3. 52.222-20 WALSH-HEALY PUBLIC CONTRACTS ACT (DEC 1996)**

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**4. 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999))**

The offeror represents that-

(a) It \* has, \* has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;

(b) It \* has, \* has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**5. 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)**

(Applicable to contracts which include the clause at FAR 52.222-26, Equal Opportunity, except for construction contracts.)

The offeror represents that --

(a) It  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**6. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**ITEMS 7-19 DO NOT APPLY TO PROCUREMENTS OF \$25,000 OR LESS MADE THROUGH SMALL PURCHASE PROCEDURES.**

**7. 52.219-3 NOTICE OF TOTAL HUBZONE SET-ASIDE (JAN 1999)**

(a) *Definition.* "HUBZone small business concern," as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for--

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause will be performed by the HUBZone small business participant or participants.

(e) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

**8. 52.219-2 EQUAL LOW BIDS (OCT 1995)**

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

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(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

**9. 52.215-6 PLACE OF PERFORMANCE (OCT 1997)**

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, \* intends, \* does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance Name and Address of Owner

(Street Address, City, and Operator of the Plant

State, County, Zip Code) or Facility if Other than

Offeror or Respondent

**10. 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY**

**MATTERS (APR 2001)**

(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 the 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, or receiving stolen property; **[This language stayed indefinitely. Please use paragraph (a)(1)(i)(D) below.]**

(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 paragraph (a)(1)(i)(B) of this provision; and **[This language stayed indefinitely. Please use paragraph (a)(1)(i)(E) below.]**

(D) 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, or receiving stolen property; and

(E) 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)(D) of this provision.

(ii)(A) **[This paragraph (a)(1)(ii) is stayed indefinitely.]** The offeror, aside from the offenses enumerated in paragraphs (a)(1)(i)(A), (B), and (C) of this provision, has \* has not \* within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws--

(1) Been convicted of a Federal or State felony (or has any Federal or State felony indictments currently pending against them); or

(2) Had a Federal court judgment in a civil case brought by the United States rendered against them; or

(3) Had an adverse decision by a Federal administrative law judge, board, or commission indicating a willful violation of law.

(B) If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the Contracting Officer; and

(iii) 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 subsidiary, 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 nonresponsible.

(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.

**11. 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)**

(a) The offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.



(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (l) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

\_\_\_\_\_ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(l) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

© If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**12. 52.203-4 CONTINGENT FEE REPRESENTATION AND AGREEMENT (APR 1984)**

(a) Representation. The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror--

[NOTE: For interpretation of the representation, including the term "bona fide employees," sees Subpart 3.4 of the Federal Acquisition Regulation.]

(1)  has,  has not employed or retained any person or company to solicit or obtain this contract; and

(2)  has,  has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) Agreement. The offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer --

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

**13 52.223-1 CLEAN AIR AND WATER CERTIFICATION (APR 1984)**

(Applicable if the offer exceeds \$100,000 or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 7413(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The offeror certifies that --

(a) Any facility to be used in the performance of this proposed contract is , is not  listed on the Environmental Protection Agency List of Violation Facilities;

(b) The offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

© The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**14. 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)**  
(Deviation)

(Applicable if the offer exceeds \$100,000)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation.

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of

Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and certificate to the Contracting Officer prior to the award of a contract to the SBA.

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

© Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

**15. 52-209-7 ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATE--MARKETING CONSULTANTS (NOV 1991)**

(Applicable to negotiated acquisitions if the offer exceeds \$200,000.)

(a) Definitions.

(1) Marketing consultant means any independent contractor who furnishes advice, information, directions, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a government contract by that offeror. An independent Contractor is not a marketing consultant when rendering-

(i) Services excluded in Subpart 37.204;

(ii) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);

(iii) Routine legal, actuarial, auditing, and accounting services; or,

(iv) Training services.

(2) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains or engages contractually one or more marketing consultants in connection with a contract, shall submit to the Contracting Officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

(1) The name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.

(3) The names, addresses, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.

(4) A description of the nature of the services rendered by or to be rendered by the marketing consultant.

(5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12 months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person).

(6) A statement that the person who signs the certificate for the prime Contractor has informed the marketing consultant of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1.

(7) The signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the apparent successful offeror and the marketing consultant.

(d) In addition, the apparent successful offeror shall forward to the a certificate signed by the marketing consultant that the marketing consultant has been told of the existence of Subpart 9.5 and Office of the Federal Procurement Policy Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

(e) Failure of the offeror to provide the required certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

**16. 52.219-15 NOTICE OF PARTICIPATION BY ORGANIZATIONS FOR THE HANDICAPPED (APR 1991)**

(Applies if solicitation is total or partial small business set-aside)

(a) Definitions.

"Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

"Public or private organization for the handicapped" means one (1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (3) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production of provision of the commodities or services.

(b) Certification. The offeror certifies that it is  is not  a public or private organization for the handicapped. An offeror certifying in the affirmative is eligible to participate in any resultant contract as if it were a small business concern.

© Agreement. An offeror certifying as a public or private organization for the handicapped agrees that at least 75 percent of the direct labor required in the performance of the contract will be performed by handicapped individuals.

**INSTRUCTIONS, CONDITIONS AND NOTICES**

1. SOLICITATION DEFINITIONS - SEALED BIDDING
2. PREPARATION OF BIDS - OTHER THAN CONSTRUCTION
3. EXPLANATION TO PROSPECTIVE BIDDERS
4. AMENDMENTS TO INVITATIONS FOR BIDS
5. SUBMISSION OF BIDS
6. FAILURE TO SUBMIT BID
7. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS
8. FALSE STATEMENTS IN BIDS
9. PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW
10. SITE VISIT
11. FINANCIAL STATEMENT
12. ALL OR NONE BIDS
13. CONTRACT AWARD - SEALED BIDDING/OTHER THAN CONSTRUCTION
14. AUTHORIZED DEVIATIONS OR VARIATIONS IN PROVISIONS

## SOLICITATION PROVISIONS (Sealed Bid)

### 1. FAR 52.214-1-SOLICITATION DEFINITIONS - SEALED BIDDING (JUL 1997)

"Government" means United States Government.  
"Offer" means "bid" in sealed bidding.  
"Solicitation" means an invitation for bids in sealed bidding.

### 2. FAR 52.214-12-PREPARATION OF BIDS - OTHER THAN THAN CONSTRUCTION (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount column of the Schedule." In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.)

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

### 3. FAR 52.214-6-EXPLANATION TO PROSPECTIVE BIDDERS (Apr 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawing, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

### 4. 52.214-3 Amendments to Invitations for Bids. (Dec 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt

### 5. FAR 52.214-5-SUBMISSION OF BIDS (Mar 1997)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means)--

(1) Addressed to the office specified in the solicitation; and

(2) Showing the time and date specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

### 6. FAR 52.214-9-FAILURE TO SUBMIT BID (Jul 1995)

Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

### 7. 52.214-7 LATE SUBMISSION, MODIFICATIONS, AND WITHDRAWALS OF BIDS Nov 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and--

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes

facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

**8. FAR 52.214-4-FALSE STATEMENTS IN BIDS (Apr 1984)**

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in a quantity less than the quantity offered, at the unit prices offered, 18 U.S.C. 1001.

**9. 52.222-24-PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (Evaluation (Feb 1999))**

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

**10. FAR 52.237-1-SITE VISIT (Apr 1984)**

Applies when services other than construction are to be performed on Government installations.)  
Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

**11. FAR 52.247-6-FINANCIAL STATEMENT (Apr 1984)**

(Applies to solicitations for transportation or for transportation related services.)  
The offeror shall, upon request, promptly furnish the Government with a current certified statement of the offeror's financial condition and such data as the Government may request with respect to the offeror's operations. The Government will use this information to determine the offeror's financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offeror to possible rejection on responsibility grounds.

**12. GSAR 552.214-73-"ALL OR NONE" OFFERS**

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and makes awards on an "all or none" basis as provided below:

(b) (Applicable to definite quantity contracts.) An offer submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer. Award will be made to result in the lowest total cost to the Government.

(c) (Applicable only to requirements and indefinite quantity contracts.) An offer submitted on an "all or none" or similar basis will not be considered unless the offer is low on each item to which the "all or none" offer is made applicable. The term "each item" as used in this clause refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate.

**13. FAR 52.214.10-CONTRACT AWARD - SEALED BIDDING/OTHER THAN CONSTRUCTION (Jul 1990)**

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will

be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may-

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

**14. GSAR 552.252-5- AUTHORIZED DEVIATIONS OR VARIATIONS IN PROVISIONS**

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation or variation is indicated by the addition of "(DEVIATION)" or "(VARIATION)" after the date of the provision, if the provision is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5). The use in this solicitation of any Federal Acquisition Regulation (FAR) provision with an authorized deviation or variation that is published in the General Services Administration Acquisition Regulation is indicated by the addition of "(DEVIATION (FAR provision no.))" or "(VARIATION (FAR provision no.))" after the date of the provision.

(b) The use in this solicitation of any General Services Administration Acquisition Regulation provision with an authorized deviation or variation is indicated by the addition of "(DEVIATION)" or "(VARIATION)" after the date of the provision.

(c) Changes in wording of provisions that are prescribed for use on a "substantially the same as" basis are not considered deviations. Therefore, when such provisions are not worded exactly the same as the FAR or the GSAR provision, they are identified by the word "(VARIATION)."

**EVALUATION FACTORS FOR AWARD**

**1. AWARD BASIS**

Award will be made in the aggregate to the lowest responsive, responsible bidder meeting all the requirements of the contract. Prompt payment discounts will be considered if for 20 days or more. The lowest responsive bid shall be determined by the quantity factor. Whenever a discrepancy exists between the unit price and the aggregate the unit price shall prevail.