

**FAR Clause 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (DECEMBER 2008)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.233-3, Protest after Award (AUG 1996) (31 U.S.C. 3553).
- (2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: *[Contracting Officer check as appropriate.]*

- \_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).
- \_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008)(Pub.L.110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
- \_\_\_ (3) 52.219-3, Notice of Total HUBZone Set-Aside (JAN 1999) (15 U.S.C. 657a).
- \_\_\_ (4) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JUL 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- \_\_\_ (5) [Removed]
- \_\_\_ (6) (i) 52.219-6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
  - \_\_\_ (ii) Alternate I (OCT 1995) of 52.219-6.
  - \_\_\_ (iii) Alternate II (MAR 2004) of 52.219-6.
- \_\_\_ (7) (i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
  - \_\_\_ (ii) Alternate I (OCT 1995) of 52.219-7.
  - \_\_\_ (iii) Alternate II (MAR 2004) of 52.219-7.
- \_\_\_ (8) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637 (d)(2) and (3)).
- \_\_\_ (9) (i) 52.219-9, Small Business Subcontracting Plan (APR 2008) (15 U.S.C. 637(d)(4)).
  - \_\_\_ (ii) Alternate I (OCT 2001) of 52.219-9.
  - \_\_\_ (iii) Alternate II (OCT 2001) of 52.219-9.
- \_\_\_ (10) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).
- \_\_\_ (11) 52.219-16, Liquidated Damages--Subcontracting Plan (JAN 1999) (15U.S.C. 637(d)(4)(F)(i)).
- \_\_\_ (12) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
  - \_\_\_ (ii) Alternate I (JUNE 2003) of 52.219-23.
- \_\_\_ (13) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (14) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (15) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) (15 U.S.C 657 f).
- \_\_\_ (16) 52.219-28, Post Award Small Business Program Rerepresentation (JUNE 2007) (15 U.S.C. 632(a)(2)).
- \_\_\_ (17) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).
- \_\_\_ (18) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).
- \_\_\_ (19) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
- \_\_\_ (20) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
- \_\_\_ (21) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212).
- \_\_\_ (22) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- \_\_\_ (23) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212).
- \_\_\_ (24) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC

2004) (E.O. 13201).

- \_\_\_ (25) (i) 52.222-50, Combating Trafficking in Persons (AUG 2007)(Applies to all contracts.)
- \_\_\_ (ii) Alternate I (AUG 2007) of 52.222-50
- \_\_\_ (26) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii)).
- \_\_\_ (ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- \_\_\_ (27) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).
- \_\_\_ (28) (i) 52.233-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).
- \_\_\_ (ii) Alternate I (DEC 2007) of 52.223-16.
- \_\_\_ (29) 52.225-1, Buy American Act--Supplies (JUNE 2003) (41 U.S.C. 10a-10d).
- \_\_\_ (30) (i) 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act (AUG 2007) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286, 109-53 and 109-169).
- \_\_\_ (ii) Alternate I (JAN 2004) of 52.225-3.
- \_\_\_ (iii) Alternate II (JAN 2004) of 52.225-3.
- \_\_\_ (31) 52.225-5, Trade Agreements (Nov 2007) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- \_\_\_ (32) 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- \_\_\_ (33) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (34) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (35) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- \_\_\_ (36) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- \_\_\_ (37) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (OCT 2003) (31 U.S.C. 3332).
- \_\_\_ (38) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).
- \_\_\_ (39) 52.232-36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).
- \_\_\_ (40) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).
- \_\_\_ (41) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).
- \_\_\_ (ii) Alternate I (APR 2003) of 52.247-64.

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

- \_\_\_ (1) 52.222-41, Service Contract Act of 1965, (Nov 2007) (41 U.S.C. 351, *et seq.*).
- \_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act--Price Adjustment (February 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).
- \_\_\_ (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).
- \_\_\_ (7) 52.237-11, Accepting and Dispensing of \$1 Coin (SEP 2008) (31 U.S.C. 5112(p)(1)).

(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 at 52.215-2, Audit and Records-Negotiation.

- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller FAR 52.212-5 - December, 2008 edition

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 or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of 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) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (e)(i) through (xi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--
  - (i) 52.203-13, Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
  - (ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
  - (iii) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
  - (iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212).
  - (v) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
  - (vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).
  - (vii) 52.222-41, Service Contract Act of 1965, (Nov 2007), (41 U.S.C. 351, et seq.).
  - (viii) 52.222-50, Combating Trafficking in Persons (AUG 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222-50.
  - (ix) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (Nov 2007)(41 U.S.C. 351, et seq.).
  - (x) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
  - (xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (February 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

\*\* (Note: Include the following **only** if the Head of the Agency has waived the examination of records by the Comptroller General. If this is not the case, **DELETE** Alternate I, below, before including in any contract.) \*\*

**Alternate I** (Feb 2000). As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”