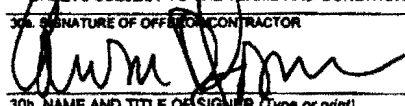


DS

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEM OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER REQ-2200-10-0004		PAGE OF 1 2							
2. CONTRACT NO. CPSC-S-10-0099		3. AWARD/ EFFECTIVE DATE 09/13/2010		4. ORDER NUMBER		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE					
7. FOR SOLICITATION (INFORMATION CALL: )		a. NAME Kim Miles			b. TELEPHONE NUMBER (No collect calls) 301-504-7018		8. OFFER DUE DATE/LOCAL TIME						
9. ISSUED BY CONSUMER PRODUCT SAFETY COMMISSION DIV OF PROCUREMENT SERVICES 4330 EAST WEST HWY ROOM 517 BETHESDA MD 20814				CODE FMPS		10. THIS ACQUISITION IS ☒ UNRESTRICTED OR ☐ SET ASIDE: % FOR: ☐ SMALL BUSINESS ☐ EMERGING SMALL BUSINESS NAICS: ☐ HUBZONE SMALL BUSINESS ☐ SOLE SOURCE SIZE STANDARD: ☐ SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS ☐ (S/A)							
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED ☐ SEE SCHEDULE		12. DISCOUNT TERMS Net 30		☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING							
16. DELIVER TO CONSUMER PRODUCT SAFETY COMMISSION OFFICE OF INFO & PUBLIC AFFAIRS 4330 EASTWEST HIGHWAY ROOM 519 BETHESDA MD 20814		CODE EXPA		18. ADMINISTERED BY CONSUMER PRODUCT SAFETY COMMISSION DIV OF PROCUREMENT SERVICES 4330 EAST WEST HWY ROOM 517 BETHESDA MD 20814		CODE FMPS							
17a. CONTRACTOR/ OFFEROR ASSOCIATION OF POOL AND SPA PROFESSIONALS 2111 EISENHOWER AVE SUITE 500 ALEXANDRIA VA 22314-4679		CODE 		FACILITY CODE		18a. PAYMENT WILL BE MADE BY CONSUMER PRODUCT SAFETY COMMISSION DIVISION OF FINANCIAL SERVICES 4330 EAST WEST HWY ROOM 522 BETHESDA MD 20814							
TELEPHONE NO.		17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM									
19. (ITEM NO.)		20. SCHEDULE OF SUPPLIES/SERVICES				21. QUANTITY		22. UNIT		23. UNIT PRICE		24. AMOUNT	
		DUNS Number:  the contractor shall provide all labor, materials and equipment necessary to develop training and education programs in accordance with The Virginia Graeme Baker Pool and Spa Safety Act (P&SSAct). This action constitutes award of the basic contract and fixed priced task order 0001. Services shall be for the period indicated herein and as stated in the attached Description of Services. (Use Reverse and/or Attach Additional Sheets as Necessary)											
25. ACCOUNTING AND APPROPRIATION DATA 0100A10DPS 2010 4420100000 EXFM002200 252H0						26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$363,760.00							
☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA						☐ ARE ☐ ARE NOT ATTACHED.							
☒ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA						☒ ARE ☐ ARE NOT ATTACHED.							
☐ 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.						☒ 29. AWARD OF CONTRACT REF. OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:							
30a. SIGNATURE OF OFFEROR/CONTRACTOR 						31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) 							
30b. NAME AND TITLE OF SIGNER (Type or print) CARVIN DiGIANNI, SENIOR DIRECTOR				30c. DATE SIGNED 9/3/2010		31b. NAME OF CONTRACTING OFFICER (Type or print) Donna Hutton				31c. DATE SIGNED 9/3/10			
AUTHORIZED FOR LOCAL REPRODUCTION PREVIOUS EDITION IS NOT USABLE						STANDARD FORM 1449 (REV. 3/2005) Prescribed by GSA - FAR (48 CFR) 53.212							

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
0001	This contract incorporates the contractors final proposal revision and any preceding written clarifications. BASE YEAR September 13, 2010 through September 12, 2011 Education and Training Programs in accordance with the Virginia Graeme Baker Pool and Spa Safety Act.	1	LT	363,760.00	363,760.00
0002	FIRST OPTION YEAR September 13, 2011 through September 12, 2012 Education and Training Program in accordance with the Virginia Graeme Baker Pool and Spa Safety Act. Amount: \$230,000.00 (Option Line Item) 09/13/2011 The government reserves the right to negotiate into this contract, additional training and educational programs as they relate to pool and spa safety and the Virginia Graeme Baker Pool and Spa Safety Act by mutual agreement between the government and the contractor. The total amount of award: \$593,760.00. The obligation for this award is shown in box 26.	1	LT	230,000.00	0.00

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED☐ INSPECTED☐ NOTED: ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32c. DATE

32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER

34. VOUCHER NUMBER

35. AMOUNT VERIFIED
CORRECT FOR

36. PAYMENT

37. CHECK NUMBER

☐ PARTIAL ☐ FINAL☐ COMPLETE ☐ PARTIAL ☐ FINAL

38. S/R ACCOUNT NUMBER

39. S/R VOUCHER NUMBER

40. PAID BY

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT

42a. RECEIVED BY (Print)

41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER

41c. DATE

42b. RECEIVED AT (Location)

42c. DATE REC'D (YY/MM/DD)

42d. TOTAL CONTAINERS

Description of Services

1. Introduction and Background

- A. The Consumer Product Safety Commission (CPSC) is a small, independent regulatory agency with the mission of protecting consumers from the risk of injury and death relating to 15,000 different types of products under its jurisdiction. Though a small agency, CPSC often provides important safety information vital to keeping consumers safe.
- B. The Virginia Graeme Baker Pool and Spa Safety Act (P&SSAct), a child safety law aimed at preventing drownings, entrapments and eviscerations, was signed by President Bush on December 19, 2007. Section 1407 of the Act calls upon the CPSC to implement an information and education program targeting 1) pool operators and owners and their employees (lifeguards, pool managers and maintenance workers, 2) pool industry stakeholders, including state and local officials, and 3) the general public, including minorities and hard to reach communities, directly and through national and local media.
- B. The Contractor shall address the P&SSAct and focus on creating programs for **training pool service operators and representatives (to include aquatics managers and lifeguards) in 46 states (listed below in para. 13 and excluding Connecticut, New Jersey, New York and Pennsylvania)** on the proper process for complying with the requirements of the P&SSAct, including the complete inspections of pools and spas. Any and all materials developed or functions planned and executed by the Contractors will be compatible with the CPSC's branded pool and spa campaign and general messaging on pool and spa safety as presented in the P&SSAct. The Contractor shall coordinate with CPSC and its public relations contractor to assure the continuity of the program.

2. Objective

- A. The primary purpose of this contract is to augment the Agency's outreach and education and training capabilities, therefore impacting larger and more diverse audiences around the country on pool and spa safety and the P&SSAct. The Contractors shall use their established expertise and networks for communications and outreach to the target audiences and their substantial experience educating and training on pool and spa safety issues as they relate to the P&SSAct. The contractor's mission of work shall include, but not be limited to, water safety and pool and spa facility education and proper maintenance. The efforts of the Contractor shall be aimed at supporting CPSC's goal to bring all public pools and spas into compliance with the Act by engaging, **training pool service operators and representatives (to include aquatics managers and lifeguards)** about the Act and its relation to proper pool maintenance and the inspection process. Although the Act addresses

only public pools and spas, the training programs and education should also be relevant to residential pools, including maintenance as that relates to the P&SSAct.

B. The target audience for this contract can include all or part of the following groups:

- **Pool and aquatics managers, lifeguards, industry service and maintenance people; and manufacturers, distributors and retailers.**

C. Of utmost importance will be the Contractor's ability to devise a program that will fit into CPSC's current mission and directly address the P&SSAct in relation to general aquatic education and training.

- D.** As a result of this contract, a larger group of qualified operators and daily maintenance personnel will be available nationwide to bring and keep pools and spas in compliance and recognize when they are not and in need of correction. The outcome for this work will mean that a large number of pool industry people will become very familiar with the P&SSAct and all of its recommendations, including those for residential pools and spas.

3. Contract Type

This is a firm fixed priced Indefinite Delivery, Indefinite Quantity performance based contract. Multiple awards may be established based on contractor outreach and service quality. Performance will be measured based on training compliance with the P&SSAct and outreach capacity. This contract includes a base year and a one year option period.

4. Performance Work Statement

- A.** Independently and not as an agent of the government, the Contractor shall provide all labor, materials and equipment necessary to develop a training and education program(s) and materials for pool industry service representatives. The contractor shall include public service messages regarding the P&SSAct and its recommendations, including those for residential pools. The Contractor will get approval for design and content of handouts and online materials from CPSC and its designated public relations contractor. All messaging will be consistent with CPSC's P&SSAct branded campaign. The training and education programs shall include but not be limited to:

- Training classes dedicated to the proper fulfillment and inspection of pools and spas for the P&SSAct section 1404.
- Creating and hosting electronic downloadable videos, Power Point modules or Webinars for training or recertification purposes for certified pool operators to bring them up to date on the P&SSAct.

- B. The contractor shall conduct or host safety events and educational programs and projects, produce and disseminate communication materials, including teaching projects and promotional materials.
- C. The contractor shall communicate with **pool and aquatics managers, lifeguards, industry service and maintenance people** about the educational and media activities being **conducted in their community, in an effort to enlist trainees and to increase** inspections and compliance with the P&SSAct at the state and local level.
- D. All materials developed and distributed by the Contractor will include the **brand name and logo developed by CPSC for its campaign; all electronic materials will link to CPSC's www.PoolSafety.gov** (as well as the Contractor's website).
- E. The contractor shall invite a CPSC representative to participate in any pool and spa safety events that they host or sponsor. Reports of these events and the audience reached are required, including lists of trainees and their affiliations and contact details.
- F. Translation Services: Where appropriate, the contractor shall provide Spanish language materials for dissemination to key Spanish language media, Web sites, training sessions and at community events.
- G. The contractor shall propose methods for measuring the effectiveness of their projects to provide an overview of its impact on the target audience(s).

5. Contractor Qualifications

The Contractor must meet the following minimum qualification requirements:

1. The contractor shall have a minimum of ten (10) years experience in pool and spa or aquatics safety.
2. The contractor shall have the ability to reach a significant portion of the targeted audience(s) (ref paragraph 1.B).
3. The contractor shall have a record of innovative and successful public service or campaigning or outreach on important consumer or public safety issues related to pools and spas.
4. The contractor shall have the ability to report placement and impressions or contact numbers for an analysis of the impact of the campaign.
5. The contractor shall have the ability to devise original and creative concepts for reaching out and educating targeted audiences that coincide with the Contractor(s) main mission.
6. The contractor shall have the ability to track and measure progress and success regarding influencing the target audience.

6. Reporting Requirements

- a. The contractor shall provide a performance plan detailing the targeted audiences(s) and the methodology for tracking the effectiveness and outcomes of the program within five (5) working days of contract award. The plan shall be reviewed for approval by the CPSC Project Officer. Acceptance of the plan will be based on conformance with the performance work statement, paragraph 4. The contractor shall present the plan to the CPSC project office at a meeting to be held at CPSC headquarters.
- b. In addition, the contractor will submit the following reports to the Project Officer:

Monthly - Every month during the contract performance period, the contractor will submit a progress report within seven (7) calendar days after the end of the month being reported.

Format: Electronically in an MS Word document or Excel Spreadsheet

Content: Include major accomplishments, planned activities, milestones, any issues or risks, contingency plans, action items and budgeting information.

Quarterly - Every three (3) months during the contract performance period, the contractor will submit a progress report within seven (7) days after the three month period.

Format: Electronically in an MS Word document or Excel Spreadsheet

Content: A summary of the work performed by Task including milestones, successes, obstacles, material development and completion, partner information, metric updates and other information pertinent to the contractor's approved performance plan.

Draft Final Report: The contractor shall submit a draft final report to the Project Officer for review. The draft final report shall identify all services performed and results achieved, including numbers, locations and identities, including position and affiliation, within the identified target groups. If returned to the contractor as a result of the review, the contractor shall address and/or revise their report accordingly and return the final version to the project officer within ten (10) working days. This document shall be sent electronically.

Final Report: The Contractor shall submit a final report to the Project Officer after review by the project officer and implementation of any required changes. The final Report(s) must be delivered in a hardcopy (original and 2 copies) and electronic Format to the address in paragraph 8.

7. Delivery and Performance

All materials developed and distributed by the Contractor shall be approved for design and content of handouts and online materials by the contract Project Officer and its designated public relations contractor. All messaging will be consistent with CPSC's P&SSAct branded campaign.

8. Contract Points of Contact

- a. The contractor shall designate in performance of this contract one direct contractor representative to work with and respond to any concerns or expedited requests from CPSC.
- b. The designated CPSC Project Officer for this contract is as follows:

Kathleen Reilly
Office of Information and Public Affairs
4430 East West Highway
Bethesda, Maryland 20814
Tele: (301) 504-7222
Email: kreilly@cpsc.gov

9. Task Orders

Additional task orders may be established as a result of this contract award. If additional services are required, the Government will issue a request for quotation with a statement of work to the Contractor. The Contractor will be required to submit a pricing and technical proposal in response to the request for quotation. Upon completion of any necessary negotiations, the Government will issue a firm fixed price task order for the requested services. The Contractor is not authorized to commence work on a task until a task order is issued.

10. Period of Performance

This contract shall be effective on the date of award (block 31c of the SF1449) and continue for a twelve month period (Ref. line item 0001 in the schedule, page 2). The contract includes a one year option period, if exercised by the government.

11. Government Furnished Materials

- a. The government may provide guidelines, art work, and materials for training and education that are currently being developed by the Agency and its public relations contractor.
- b. The government will provide the CPSC established brand and logo. The contractor shall use the agency's established brand and logo for the pool and spa safety campaign on all

education and training materials to identify these to be part of the CPSC's P&SSAct campaign.

12. Quality Control

The contractor shall develop and maintain a quality control program to ensure qualified and professional personnel are being provided and that their performance is in accordance with the criteria stated within this performance work statement and commonly accepted commercial practices. At a minimum, the Contractor shall develop quality control procedures that address the areas identified in the performance work statement.

13. The forty-six states that are the "territory" of this contract are:

**Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky**

**Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
North Dakota
North Carolina
Ohio
Oklahoma
Oregon**

**Rhode Island
South Carolina
South Dakota
Tennessee
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming**

CONTRACT CLAUSES

52.212-4 Contract Terms and Conditions—Commercial Items. (Mar 2009)

(a) **Inspection/Acceptance.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) **Assignment.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) **Changes.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) **Disputes.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **Definitions.** The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) **Excusable delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The

Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

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

(x) 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, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.—

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) 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—

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

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

(B) Affected contract number and delivery order number, if applicable;

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

(D) Contractor point of contact.

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

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) Central Contractor Registration (CCR).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. (FEB 2010)

(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) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
___ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).
- (2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (3) 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.]

- x (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 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) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (MAR 2009) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)
- ___ (4) 52.204-11, American Recovery and Reinvestment Act—Reporting Requirements (Mar 2009) (Pub. L. 111-5).
- ___ (5) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
- ___ (6) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
- ___ (7) [Reserved]
- ___ (8)(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.
- ___ (9)(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.
- ___ (10) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
- ___ (11)(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.
- ___ (12) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- ___ (13) 52.219-16, Liquidated Damages—Subcon-tracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- ___ (14)(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.
- ___ (15) 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).
- ___ (16) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (17) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).
- ___ (18) 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2009) (15 U.S.C. 632(a)(2)).
- ___ (19) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- x___ (20) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Aug 2009) (E.O. 13126).
- x___ (21) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- x___ (22) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- x___ (23) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).
- x___ (24) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- x___ (25) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

— (26) 52.222-54, Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

— (27)(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)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (28) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).

— (29)(i) 52.223-16, 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.

— (30) 52.225-1, Buy American Act—Supplies (Feb 2009) (41 U.S.C. 10a-10d).

— (31)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (June 2009) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

— (ii) Alternate I (Jan 2004) of 52.225-3.

— (iii) Alternate II (Jan 2004) of 52.225-3.

— (32) 52.225-5, Trade Agreements (AUG 2009) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

— (33) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (34) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

— (35) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

— (36) 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)).

— (37) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

x— (38) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

— (39) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

— (40) 52.232-36, Payment by Third Party (Feb 2010) (31 U.S.C. 3332).

— (41) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

— (42)(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) (Sep 2009) (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 (Sep 2009) (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) (41 351, et seq.).

— (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) (41 U.S.C. 351, et seq.).

— (7) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247).

— (8) 52.237-11, Accepting and Dispensing of \$1 Coin (Sept 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 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 this paragraph (e)(1) 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) [Reserved]

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(vii) [Reserved]

(viii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).

(ix) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

—Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(x) 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.*).

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

(xii) 52.222-54, Employment Eligibility Verification (JAN 2009).

(xiii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiv) 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). 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)

52.216-18 Ordering.

ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from contract date of award through the contract expiration.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

52.216-19 Order Limitations.

ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than one job, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of one job;

(2) Any order for a combination of items in excess of N/A ; or

(3) A series of orders from the same ordering office within thirty days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within five days after issuance, with written notice stating the Contractor's intent not to ship

the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-22 Indefinite Quantity.

INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after the completion date stated on the applicable task order.

(End of clause)

52.217-8 Option to Extend Services.

OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within fifteen (15) days prior to completion of the last stated option period.

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within fifteen days prior to expiration of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least thirty days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed two years .

(End of clause)

52.232-18 Availability of Funds.

AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

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

“Agency” means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

“Covered Federal action” means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.

(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

“Influencing or attempting to influence” means making, with the intent to influence, any communication to or appearance before 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 in connection with any covered Federal action.

“Local government” means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Reasonable compensation” means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Regularly employed” means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State” means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay 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 in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay 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 in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Subcontracts.

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

(End of clause)

CONTRACTOR'S NOTE

I. 52.0000-4004B

BILLING INSTRUCTIONS

Pursuant to the Prompt Payment Act (P.L. 97-177) and the Prompt Payment Act Amendments of 1988 (P.L. 100-496) all Federal agencies are required to pay their bills on time, pay interest penalties when payments are made late, and to take discounts only when payments are made within the discount period. To assure compliance with the Act, vouchers and/or invoices shall be submitted on any acceptable invoice form which meets the criteria listed below. Examples of government vouchers that may be used are the Public Vouchers for Purchase and Services Other Than Personal, SF 1034, and Continuation Sheet, SF 1035. At a minimum, each invoice shall include:

1. The name and address of the business concern (and separate remittance address, if applicable).
2. Taxpayer Identification Number (TIN).
3. Invoice date (use of invoice number in addition to invoice date is prudent but not required).
4. The contract or purchase order number (see block 2 of OF347 and block 4 of SF1449 on page 1 of this order), or other authorization for delivery of goods or services.
5. Description, price and quantity of goods or services actually delivered or rendered.
6. Shipping cost terms (if applicable).
7. Payment terms.
8. ACH Vendor Information which includes: the Financial Institution, routing transit number, and depositor account number. In addition please specify whether account is a checking account or savings account.
9. Other substantiating documentation or information as specified in the contract or purchase order.
10. Name (where practicable), title, phone number and mailing address of responsible official to be notified in the event of a deficient invoice.

ORIGINAL VOUCHERS/INVOICES SHALL BE SENT TO:

Accounting Officer
Div. of Financial Services, Room 522
U.S. Consumer Product Safety Commission
4330 East West Hwy
Bethesda, Maryland 20814

The contractor may invoice after acceptance of all final deliverables. Invoices not submitted in accordance with the above stated minimum requirements will not be processed for payment. Deficient invoices will be returned to the vendor within seven days or sooner. Standard forms 1034 and 1035 will be furnished by CPSC upon request of the contractor.

II. PAYMENT

Payment will be made as close as possible to, but not later than, the 30th day after receipt of a proper invoice as defined in "Billing Instructions," except as follows:

When a time discount is taken, payment will be made as close as possible to, but not later than, the discount date. Discounts will be taken whenever economically justified. Otherwise, late payments will include interest penalty payments. Inquiries regarding payment should be directed to the Accounting Officer at (301) 504-7203 or 301-504-7130 or at the following address:

Accounting Officer
Div. of Financial Services, Room 522
U.S. Consumer Product Safety Commission
4330 East West Hwy
Bethesda, Maryland 20814

Complaints related to the late payment of an invoice should be directed to Deborah Peebles Hodge, Director, Division of Financial Services at the same address (above).

III. ALL OTHER INFORMATION RELATING TO THE PURCHASE ORDER

Contact: Kim Miles at (301) 504-7018

IV. PROCESSING INSTRUCTIONS FOR REQUESTING OFFICES

The Purchase Order/Receiving Report (Optional Form 347 or Standard Form 1449) must be completed at the time the ordered goods or services are received. Upon receipt of the goods or services ordered, each item should be inspected, accepted (partial or final) or rejected. The Purchase Order/Receiving Report must be appropriately completed, signed

and dated by the authorized receiving official. In addition, the acceptance block shall be completed (Blocks 32 a, b & c on the SF 1449 and column G and page 2 of the OF 347). The receiving report shall be retained by the requesting office for confirmation when certifying invoices.

V. PROPERTY/EQUIPMENT PURCHASES

In the case of Purchase Orders/Receiving Reports involving the purchase and receipt of property/equipment, a copy of the Purchase Order/Receiving Report must also be immediately forwarded directly to the Property Management Officer (Rey Garcia) in the Facilities Management Support Services Branch (Room 520). The transmittal of Purchase Orders/Receiving Reports to the property management officer is critical to the integrity and operation of CPSC's Property Management System. Receiving officials should also forward copies to their local property officer/property custodian consistent with local office procedures.