

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**  
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER: REQ-4400-15-0011  
PAGE OF: 1 OF 42  
2. CONTRACT NO.: CPSC-S-15-0072  
3. AWARD/EFFECTIVE DATE: 09/24/2015  
4. ORDER NUMBER  
5. SOLICITATION NUMBER  
6. SOLICITATION ISSUE DATE

7. FOR SOLICITATION INFORMATION CALL: Patricia Folts  
b. TELEPHONE NUMBER (No collect calls): (301) 504-7674  
8. OFFER DUE DATE/LOCAL TIME

9. ISSUED BY: CONSUMER PRODUCT SAFETY COMMISSION  
DIV OF PROCUREMENT SERVICES  
4330 EAST WEST HWY  
ROOM 523  
BETHESDA MD 20814  
CODE: FMPS  
10. THIS ACQUISITION IS:  UNRESTRICTED OR  SET ASIDE: % FOR:  
 SMALL BUSINESS  
 HUBZONE SMALL BUSINESS  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  
WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM  
EDWOSB  
8(A)  
NAICS:  
SIZE STANDARD:

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  
14. METHOD OF SOLICITATION:  RFQ  IFB  RFP

15. DELIVER TO: CONSUMER PRODUCT SAFETY COMMISSION  
DIRECTORATE FOR ENGINEERING SCI  
5 Research Place  
Rockville MD 20850  
CODE: ES  
16. ADMINISTERED BY: CONSUMER PRODUCT SAFETY COMMISSION  
DIV OF PROCUREMENT SERVICES  
4330 EAST WEST HWY  
ROOM 523  
BETHESDA MD 20814  
CODE: FMPS

17a. CONTRACTOR/OFFEROR: THE MOTIV DESIGN LLC  
11 ELKINS STREET  
STE 310  
BOSTON MA 02127-1628  
CODE: [REDACTED]  
FACILITY CODE:  
18a. PAYMENT WILL BE MADE BY: CPSC Accounts Payable Branch  
AMZ 160  
P. O. Box 25710  
Oklahoma City OK 73125  
CODE: FMFS  
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: [REDACTED] COR: Rana Balci-Sinha 301-987-2584   RBalciSinha@cpsc.gov  The contractor shall provide all personnel, equipment, supplies, facilities, and materials necessary to conduct the Technical Feasibility and Cost Improvement Analysis of Safer Window Covering Technologies as defined in the Performance Work Statement and in accordance with contractor's technical proposal dated September (Use Reverse and/or Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA: 0100A15DSE-2015-2264400000-EXHR004400-252B0  
26. TOTAL AWARD AMOUNT (For Govt. Use Only): \$268,200.00

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.  
 29. AWARD OF CONTRACT: \_\_\_\_\_ 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  
30b. NAME AND TITLE OF SIGNER (Type or print): Rud M. Johnson  
30c. DATE SIGNED: 9/24/15  
31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER): [Signature]  
31b. NAME OF CONTRACTING OFFICER (Type or print): Rud M. Johnson  
31c. DATE SIGNED: 9/24/15

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	15, 2015 and the attached terms and conditions provided herein on pages 3 - 42.  Period of Performance: 25 September 2015 - 24 September 2016				
0001	Phase One: Existing Product and Intellectual Property Landscape	1	EA	66,200.00	66,200.00
0002	Phase Two: Product and Intellectual Property Evaluation	1	EA	56,000.00	56,000.00
0003	Phase Three: Concept Cost Optimization and Reduction	1	EA	63,000.00	63,000.00
0004	Phase Four: Research and Usability Testing	1	EA	55,000.00	55,000.00
0005	Phase Five: Reporting	1	EA	28,000.00	28,000.00
	The total amount of award: \$268,200.00. The obligation for this award is shown in box 26.				

32a. QUANTITY IN COLUMN 21 HAS BEEN

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

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

**TECHNICAL FEASIBILITY AND COST IMPROVEMENT ANALYSIS OF  
SAFER WINDOW COVERING TECHNOLOGIES  
STATEMENT OF WORK**

## **1. PURPOSE AND OBJECTIVE**

The staff of the Consumer Product Safety Commission (CPSC) is evaluating various existing and potential products to address strangulation hazards associated with corded window coverings. CPSC staff is aware of window covering products that employ safer technologies such as cord retractors, cord shrouds, cranks, and manual and motorized cordless products.

This contract is to conduct technical feasibility and cost improvement analysis on the available safer technologies that address child strangulation on a wide variety of window covering types and sizes. Currently available technological options eliminate hazardous operating cords, or make hazardous cords non-hazardous or inaccessible (see Appendix for definitions). Staff is also interested in evaluating the usability of the safer technologies as well as their aesthetic appeal.

The contract should provide information on the cost of the safer technologies, options to reduce that cost, how widely the technological options can be implemented in terms of window covering type, size, and weight; and how the technological options affect the ease of use and aesthetic appeal.

## **2. CONTRACT TYPE**

This procurement is a firm-fixed price contract to provide investigations into window covering products and analysis to address strangulation hazard in corded window coverings. This is a non-personal services contract.

## **3. BACKGROUND**

Window coverings are household products and do not pose a hazard to older children and adults in their intended use of operation. Young children, because of their exploration with the environment to learn and play, can become entangled in accessible and hazardous cords. If entangled children are not found within a few minutes, they may die silently or get injured with sometimes lifelong complications. Staff estimates that a minimum of 11 strangulation fatalities occur annually on window covering cords among children under the age of five.

Window coverings comprise of a wide range of products, including shades, blinds, curtains, and draperies. In general terms, “hard” window coverings, composed of slats or vanes, are considered blinds, and “soft” window coverings that contain a continuous roll of material are considered shades. Both blinds and shades may have inner cords that cause a motion, such as raising, lowering, traversing, or rotating the window covering to achieve the desired level of light control. Curtains and draperies do not contain inner cords but may be operated by continuous loop. The cord or loop that is manipulated by the consumer to operate the window covering is called an “operating cord” and may be in the form of a single cord, multiple cords, or continuous loops. Cordless window coverings are products designed to function without an operating cord,

but may contain inner cords. The most common types of window coverings, associated cords, and observed hazard scenarios with cords are described in the CPSC staff's [briefing package](#) to the Commission.<sup>1</sup>

The ANSI/WCMA A100.1-2014, *American National Standard for Safety of Corded Window Covering Products* establishes safety performance requirements for window coverings sold in the United States. The standard applies to all interior corded window covering products and includes, but is not limited to, cellular shades, horizontal blinds, pleated shades, roll-up style blinds, roller shades, Roman style shades, traverse rods, and vertical blinds. The standard was first published in 1996, and subsequently, was revised six times. The latest version was published in 2014.

#### **4. DESCRIPTION OF SERVICES**

The contractor shall provide all personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items and non-personal services to perform the following tasks:

4.1 The contractor shall identify currently available window coverings that prevent strangulation in exposed cords for the following product categories:

1. horizontal blinds (metal, plastic, wood, and faux wood)
2. vertical blinds
3. cellular shades
4. roller shades
5. Roman style shades
6. roll-up shades
7. curtains/draperies

The contractor shall identify currently available devices (retrofit kits) to make a window covering safe by eliminating or guarding the exposed cords.

The contractor shall conduct a patent review/search to identify patents for window coverings or window covering mechanisms that are intended to address the strangulation in exposed cords.

Currently available window coverings, devices and patents that address the strangulation hazard shall include at a minimum, products with no operating cords (i.e., products sold as “cordless”), cord shrouds, integrated cord/chain tensioners, cranks, and cord retractors.

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1

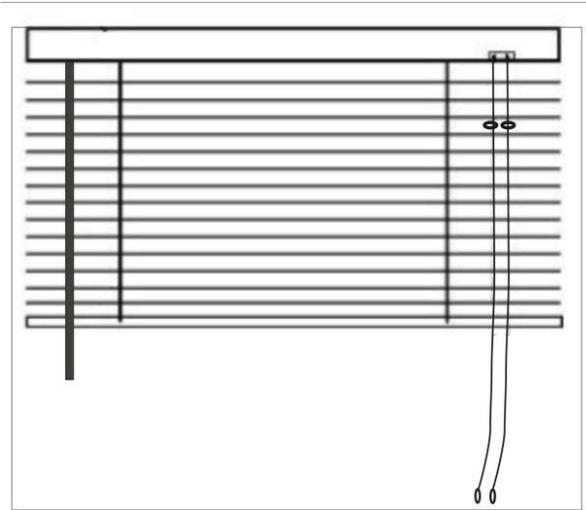


Figure 1. Example of accessible pull cords

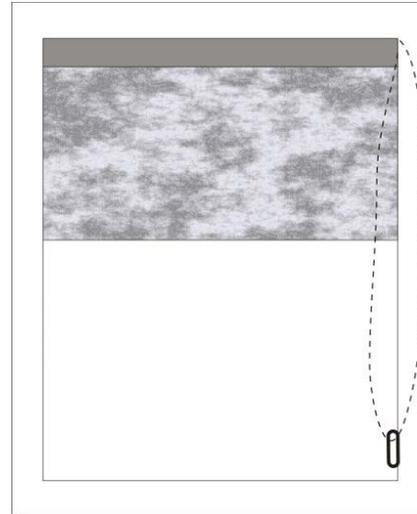


Figure 2. Example of a continuous loop

#### 4.2 The contractor shall evaluate the products and patents identified in 4.1

- 4.2.1 Determine the cost of accessible corded technology for each product category as a baseline.
- 4.2.2 Identify the limitations of the technology to be implemented for each product category (e.g., limitations regarding size and weight of the window covering, window depth)
- 4.2.3 Determine the manufacturing cost of each technology
- 4.2.4 Identify the factors that affect the cost of each technology (e.g., production volume, number of components, material type, manufacturing process, and assembly).
- 4.2.5 Develop options to reduce the costs of these technologies without affecting the durability of the technology so that the technology can withstand the expected lifetime of the window covering product. These options can include but are not limited to identifying savings on components and parts, finding savings in redesign, and optimizing costs on a higher volume of parts by consolidating similar parts
- 4.2.6 Estimate the cost with these options and develop a technology applicability and product type matrix with constraints where applicable.
- 4.2.7 Focus Group and Usability Testing: The contractor shall develop a usability test consisting of a minimum of 30 participants to evaluate the ease of operation. The contractor shall include a study of the aesthetics appeal to determine acceptability by the general public.
  - 4.1.1 The contractor shall determine the recruitment strategy for the focus group and usability testing.
  - 4.1.2 The contractor shall execute all necessary preparatory and logistical activities to recruit for and conduct each focus group and usability testing, including preparing the moderator guides, securing the facilities, preparing support materials, and recruiting participants.
  - 4.1.3 The contractor shall submit a draft of the moderator's guide to CPSC staff for review and comment, and shall incorporate any comments from CPSC staff into a revised final moderator's guide.

- 4.1.4 The contractor shall prepare all necessary documents and implement all activities needed to secure Institutional Review Board (IRB) approval for the focus group and usability testing. If necessary, the contractor with the assistance of CPSC will submit a package to OMB for approval.
- 4.1.5 The group discussions and one-on-one interviews will be designed to obtain information on the following issues:
  - a) Whether the product would be purchased for a home with a young child,
  - b) Whether the product would be purchased for a home with no young child,
  - c) How much the consumer would be willing to pay for the product,
  - d) Ease of use of the product compared to traditional window covering operation,
  - e) Importance of the safety benefit,
  - f) Rating of the product aesthetics,
  - g) How much *more* the consumer would be willing to pay for the inaccessible / nonhazardous feature.

## 5. DELIVERABLES

- 5.1 Report - The contractor shall prepare a report detailing all results gathered as a result of the contract. At a minimum, the report shall include:
  - 5.1.1 Background
  - 5.1.2 Engineering discussion and analysis of the available technology shall include:
    - a) Description of the technology
    - b) Manufacturing cost
    - c) Durability
    - d) Applicability and limitations of the technology
    - e) Ease of use
    - f) Aesthetic appeal
  - 5.1.3 Options development discussion shall include:
    - a) Modifications made in the technology
    - b) Applicability and limitations of the technology with modifications
    - c) Changes in production cost
    - d) Comparative analysis of durability (current vs implemented changes)
    - e) Comparative analysis of ease of use (current vs implemented changes)
    - f) Comparative analysis of aesthetic appeal (current vs implemented changes)
- 5.2 The report or sections of the report may be incorporated into a publically released CPSC staff report. See Section 9 for reporting requirements.
- 5.3 A draft report is due 4 weeks before the end of the contract period. CPSC staff will provide comments on the draft report to the contractor. Contractor shall incorporate requested revisions into the final report. Any questions or disagreements regarding revisions to the report will be resolved by mutual agreement between CPSC staff and the contractor.

## 6. CONTRACTOR QUALIFICATIONS

6.1 The company performing this service shall have:

- 6.1.1 At least five years of experience in manufacturing operations including product documentation, supplier identification and selection, and manufacturing transition; and manufacturing cost analysis.
- 6.1.2 At least five years of experience in design and development of consumer products.
- 6.1.3 At least three years of experience in conducting usability testing for non-software products.

6.2 Contractor personnel performing the work shall include:

- 6.2.1 Two co-principle investigators who shall have the following:
  - a) At least 5 years of experience in designing and developing mechanical products.
  - b) At least 3 years of experience conducting focus groups and usability tests and evaluating the results.

**7. PERIOD OF PERFORMANCE:** 25 September 2015 – 24 September 2016

**8. PLACE OF PERFORMANCE:** The work to be performed under this contract will be performed at the contractor's facility.

**9. REPORTING REQUIREMENTS:** The Contractor shall submit all reports to the Contracting Officer's Representative (COR):

Rana Balci-Sinha | RBalciSinha@cpsc.gov  
U.S. Consumer Product Safety Commission  
5 Research Place  
Rockville, MD 20850

9.1 The Contractor will provide a bi-weekly status report on Tuesdays during the task period, to be submitted to the CPSC project manager as below.

- 9.1.1 Format: The report must be provided in either Microsoft Word or Adobe Acrobat format and must be e-mailed to the CPSC project manager at: rbalcisinha@cpsc.gov
- 9.1.2 Content: The report must contain the following:
  - a) Status of project and new developments
  - b) Problems and proposed solutions
  - c) Changes in schedule

9.2 The Contractor shall provide a draft of final report

- 9.2.1 Format: The draft final report shall be provided as a Microsoft Word electronic document by email.
- 9.2.2 Content: See required content under "Final Report"

- 9.3 The Contractor will provide a final report to the CPSC project manager at:  
 Rana Balci-Sinha  
 U.S. Consumer Product Safety Commission  
 5 Research Place  
 Rockville, MD 20850
- 9.3.1 Format: The results of the Contractor testing will be provided in a Microsoft Word spreadsheet format (2 hard copies and 1 electronic copy by email and 1 electronic copy on a CD).
- 9.3.2 The final hard copy report must be in the following format:
1. Type of cover - heavier than inner pages
  2. Table of contents
  3. Provide information concerning:
    - a) The contract pursuant to which the report is prepared.
    - b) The name of the Contractor preparing the report pursuant to such contract.
  4. Provide the text of the report that must include the information detailed in section 5.
- 9.3.3 Content: The final written report must address all of the issues and objectives set forth in the Statement of Work as well as comments received from the CPSC COR. The report will become public information after clearance by CPSC staff.

**10. GOVERNMENT-FURNISHED MATERIALS:** There are no government furnished materials for this contract.

**11. OTHER CONTRACT REQUIREMENTS:**

- 11.1 The Contractor shall furnish all supplies, equipment, facilities and services required to perform work under this contract that are not listed under Section 10 of this contract.
- 11.2 A CPSC representative shall be allowed to visit the site at any time during the study.

**12. DELIVERY SCHEDULE:** The following deliverable items must be performed or delivered in accordance with the following schedule:

	<b>Item</b>	<b>Quantity</b>	<b>Delivery &amp; Performance</b>
1	Status reports See Section 9.1	Not to exceed 24	Bi-weekly on Tuesdays
2	Draft Report submitted in Microsoft Word. See Section 9.2.	1 copy via e-mail	Within 11 months of contract award
3	Final written report submitted in Microsoft Word or Adobe Acrobat format. See Section 9.3.	Original and 2 copies plus electronic format on CD	Within 12 months of contract award

**13. APPLICABLE DOCUMENTS**

- 13.1 ANSI/WCMA A100.1-2014 *American National Standard For Safety of Corded Window Covering Products*. (can be purchased at this [link](#)).<sup>2</sup>
- 13.2 [Petition CP 13-2](#) submitted to the Commission<sup>3</sup>
- 13.3 [CPSC staff briefing package](#) in response to the petition<sup>4</sup>
- 13.4 [Advance Notice of Proposed Rulemaking briefing package](#)<sup>5</sup>

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<sup>2</sup> <http://webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FWCMA+A100.1-2014>

<sup>3</sup> <http://www.cpsc.gov/Global/Regulations-Laws-and-Standards/Petitions/WindowCoveringPetition.pdf>

<sup>4</sup>

<http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf>

<sup>5</sup> <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/Corded-Window-Coverings-Advance-Notice-of-Proposed-Rulemaking.pdf>

**APPENDIX:**

Test requirements adapted from ANSI/WCMA A100.1-2014 *American National Standard For Safety of Corded Window Covering Products*:

1. No operating cords which are accessible or hazardous. The cord is deemed not accessible if cord shroud accessibility probe referenced in ANSI/WCMA standard (Figure 3) cannot touch any cords. Cords within 12 inches below the head rail are exempt from this requirement.

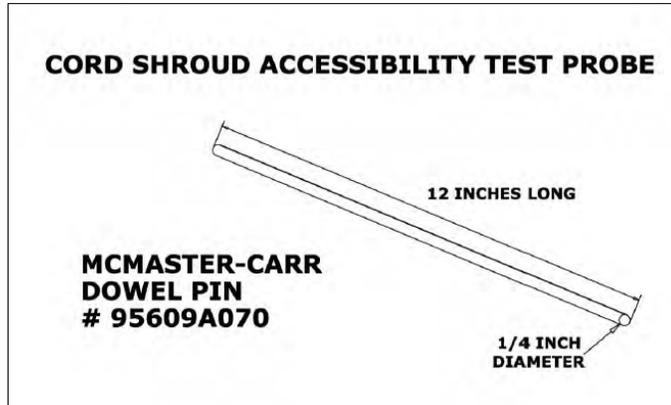


Figure 3. Accessibility probe

2. There are no accessible operating cords which are hazardous.
  - (a) If the cord is deemed accessible and has no free end, then the cord must be pulled with 5 lbs of force. A head probe (hazardous loop head probe referenced in ANSI/WCMA standard, see Figure 4) shall be inserted into the cord loop with 10 lbs of force. If the head probe can be inserted, then the loop is deemed hazardous.

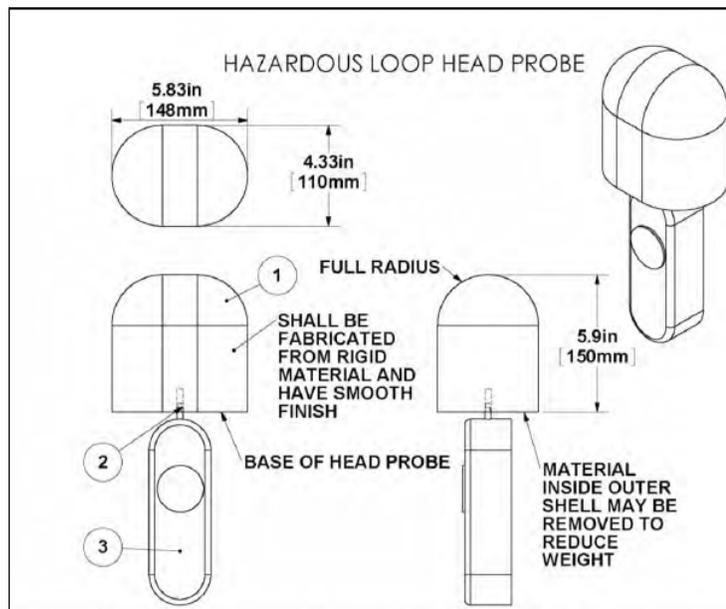
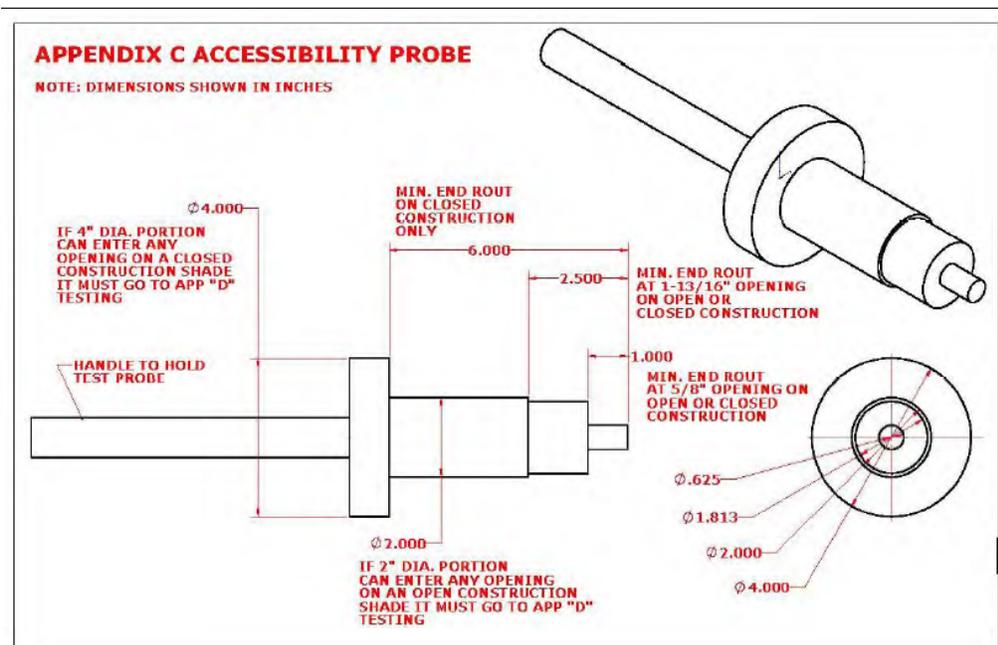


Figure 4. Head probe

- (b) If the cord is deemed accessible and has a free end, the cord shall be wrapped around a cylinder with an 8-inch circumference. If the cord can be wrapped around the cylinder at least once, the cord is deemed hazardous.
3. The product shall contain a cord shroud device which prevents accessible or hazardous cords tested per steps 1 and 2 above.
  4. The product shall contain a loop cord or bead chain restraining device that limits the operating cord loop length from creating a hazardous loop. This hazardous loop can be tested similar to step 2.

An acceptable inner cord for the WCMA 2014 standard would need to comply with one of the following:

1. The product shall have no inner cords
2. The product shall have no accessible or hazardous inner cords which can be tested similar to steps 1 and 2 above.
3. If inner cord stop devices or cord connectors are utilized, they shall be positioned 3 inches or less below the head rail when the blinds are fully lowered.
4. The product shall have shrouded inner cords. If the cord shroud accessibility probe cannot be inserted between the cord shroud and the inner lift cords or operating cord, then the assembly shall be tested to the hazardous loop test similar to step 2 of the allowable operating cords. If the probe can be inserted between the cord shroud and the inner lift cords or operating cords, then each will be individually tested to the hazardous loop test similar to step 2 of the allowable operating cords.
5. If the product is a roll up style blind, the accessible inner cords shall have a cord release device, which shall release at no more than 3 pounds.



## 14. ACCEPTANCE

- A. All work under this contract is subject to inspection and final acceptance by the Contracting Officer Representative (COR).
- B. The COR is a duly authorized representative of the Government and is responsible for the inspection, approval and acceptance of all items to be delivered under this contract.
- C. General quality measures, as set forth below, shall be applied to each work product received from the contractor:
- i. Accuracy: Work products shall be accurate in presentation and technical content.
  - ii. Clarity: Work products shall be clear and concise. All reports and products shall be easy to understand and be relevant to the supporting statement of work.
  - iii. Consistency to Requirement: All work products shall satisfy the requirements of the statement of work.
  - iv. Timeliness: Work products shall be submitted by the due dates specified in the statement of work.

## 15. CONTRACTING OFFICER'S REPRESENTATIVE (COR) DESIGNATION

- a. The following individual has been designated at the Government's COR for this contract:

➔ Rana Balci-Sinha  
U.S. Consumer Product Safety Commission  
5 Research Place  
Rockville, MD 20850  
Phone: 301-987-2584 | [RBALCISINHA@CPSC.GOV](mailto:RBALCISINHA@CPSC.GOV)

- b. The CPSC COR is responsible for performing specific technical and administrative functions, including:

- (1) performing technical evaluation as required;
- (2) assisting the Contractor in the resolution of technical problems encountered during performance; monitoring the Contractor's technical progress, including surveillance and assessment of performance, and immediately notifying the Contracting Officer when deliverables (including reports) are not received on schedule in accordance with the prescribed delivery schedule; and
- (3) inspection, approval and acceptance of all items required by the contract.

- c. The COR, who may be personally liable for unauthorized acts, is not authorized to and shall not:

- (1) make changes in scope of work, contract schedules, and/or specifications, or to make changes that affect price, quality, quantity or delivery,
  - (2) direct or negotiate any change in the terms, conditions, or amounts cited in the contract; and
  - (3) make commitments or changes that affect price, or take any action that commits the Government or could lead to a claim against the Government.
- d. A clear distinction is made between Government and Contractor personnel. No employer-employee relationship shall occur between government employees and contractor employees. Contractor employees shall report directly to their company (employer) and shall not report to Government personnel.

## **16. CLAUSES**

### **LC1B CONTRACTOR'S NOTE - DELIVERIES TO THE CPSC NATIONAL PRODUCT TESTING LABORATORY SITE, ROCKVILLE, MARYLAND**

Delivery Address:  
U.S. Consumer Product Safety Commission  
National Product Testing Laboratory  
5 Research Place  
Rockville, MD 20850

The Consumer Product Safety Commission (CPSC) Laboratory facility is located in Rockville, MD. Deliveries are to be made to the loading dock area which is accessible from the parking area entrance on Research Place on the east side of the building. Do not enter the parking area from Research Court on the North side of the facility as there may not be sufficient room to maneuver and back up to the loading dock area on the east side of the building.

Deliveries may not be left outside the building or loading dock, unless specifically directed by appropriate CPSC staff. All deliveries shall be considered "inside deliveries" in accordance with the instructions below. When scheduling deliveries, the purchase order number shall always be referenced and all packages shall clearly display the Purchase Order Number on the outside of the cartons and/or packages and include the packing slip.

#### **ATTENTION GOVERNMENT VENDOR:**

##### **A. DELIVERY INSTRUCTIONS**

###### **1. DELIVERY INSTRUCTION FOR SMALL ITEMS**

Deliveries should be made between 9:00 a.m. and 4:00 p.m. on Monday through Friday (except holidays). Deliveries outside these hours require prior arrangements.

Contacts:

Andrew Stadnik, Lab Director, 301-987-2037 x1 OR 301-706-6902  
James Hyatt, 301-987-2240  
Ed Krawiec, 301-987-2209  
Joel Recht, 301-987-2036

For the Furniture, Chair, Exercise Equipment, and IT Equipment

Contacts:

Jim Shupe – 301-424-6421 x156 (Jim 240-882-6775)  
Douglas Brown – 301-504-7846  
Andy Stadnik – 301-706-6902

## 2. DELIVERY INSTRUCTIONS FOR LARGE OR HEAVY ITEMS:

Large or heavy items must be delivered directly to the loading dock. If delivery cannot be made to the loading dock directly or via the leveling device and requires off-loading the item from the delivery vehicle to the ground, then deliveries of such large or heavy items should be scheduled 24 hours in advance and should be made between 9:00 a.m. and 3:00 p.m. on Monday through Friday (except holidays). Contact information is the same as above to arrange for CPSC lift truck operators or other lifting and handling support needs for the delivery.

## B. 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. **Do NOT** include Taxpayer Identification Number (TIN) on invoices sent via e-mail.
3. Invoice date.
4. Invoice number.
5. 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.
6. Description, price and quantity of goods or services actually delivered or rendered.

7. Shipping cost terms (if applicable).
8. Payment terms.
9. Other substantiating documentation or information as specified in the contract or purchase order.
10. Name, 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:**

**U.S. Mail**

Enterprise Service Center, c/o CPSC, Accounts Payable Branch, AMZ-160  
PO Box 25710  
Oklahoma City, Ok. 73125

**FEDEX**

Enterprise Service Center, c/o CPSC, Accounts Payable Branch, AMZ-160  
6500 S. MacArthur Blvd.  
Oklahoma City, Ok. 73169

OR

Via email to:

[9-AMC-AMZ-CPSC-Accounts-Payable@faa.gov](mailto:9-AMC-AMZ-CPSC-Accounts-Payable@faa.gov)

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.

Inquiries regarding payment should be directed to the Enterprise Service Center (ESC), Office of Financial Operations, Federal Aviation Administration (FAA) in Oklahoma City, 405-954-1693.

**C. PAYMENT**

Payment will be made as close as possible to, but not later than, the 30<sup>th</sup> 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 Caleb Pierce at 405-954-1693 or at the U.S Mail and Fedex addresses listed above:

Complaints related to the late payment of an invoice should be directed to Ricky Woods at the same the same address (above) or 405-954-5351.

Customer Service inquiries may be directed to Adriane Clark at AClark@cpsc.gov.

#### **D. INSPECTION & ACCEPTANCE PERIOD**

Unless otherwise stated in the Statement of Work or Description, the Commission will ordinarily inspect all materials/services within seven (7) working days after the date of receipt. The CPSC representative responsible for inspecting the materials/services will transmit disapproval, if appropriate, to the contractor and the contract specialist listed below. If other inspection information is provided in the Statement of Work or Description, it is controlling.

#### **E. ALL OTHER INFORMATION RELATING TO THE PURCHASE ORDER**

Contact: Contract Specialist – Tricia Folts | (301) 504-7674 | PFOLTS@CPSC.GOV

#### **F. 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.

#### **G. 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 (Ralph King) in the Facilities Management Support Services Branch (Room 425). 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.

#### **LC 21A Disclosure of Information - Limits on Publication**

a. The Contractor shall submit to the Commission any report, manuscript or other document containing the results of work performed under this contract, before such document is published or otherwise disclosed to the public, to assure compliance with Section 6(b) of the Consumer Product Safety Act (15 U.S.C. Section 2055(b)), Commission regulations (16 C.F.R. Part 1101), and a Commission directive (Order 1450.2). These provisions restrict disclosure by Commission

Contractors of information that (1) permits the public to identify particular consumer products or (2) reflects on the safety of a class of consumer products. Prior submission allows the Commission staff to review the Contractor's information and comply with the applicable restrictions. CPSC should be advised of the Contractor's desire to submit or publish an abstract or a report as soon as practical.

b. Any publication of, or publicity pertaining to, the Contractor's document shall include the following statement: "This project has been funded with federal funds from the United States Consumer Product Safety Commission under contract number CPSC-[\_\_\_\_\_]. The content of this publication does not necessarily reflect the views of the Commission, nor does mention of trade names, commercial products, or organizations imply endorsement by the Commission.

#### **LC 21B Disclosure of Information - Restricted Publication**

a. The Contractor shall submit to the Commission any report, manuscript or other document containing the results of work performed under this contract. This document shall not be published or otherwise disclosed by the contractor.

b. Should the contractor subsequently apply to the Consumer Product Safety Commission for permission to publish documents containing the results of this work and the release is approved in writing, any publication of, or publicity pertaining to, the Contractor's document shall include the following statement: "This project has been funded with federal funds from the United States Consumer Product Safety Commission under contract number CPSC-[\_\_\_\_\_]. The content of this publication does not necessarily reflect the views of the Commission, nor does mention of trade names, commercial products, or organizations imply endorsement by the Commission.

#### **LC 24 Nondisclosure of any Data Developed Under this Contract**

a. The Contractor agrees that it and its employees will not disclose any data obtained or developed under this contract to third parties without the consent of the U. S. Consumer Product Safety Commission Contracting Officer.

b. The Contractor shall obtain an agreement of non-disclosure from each employee who will work on this contract or have access to data obtained or developed under this contract.

#### **LC 31 Restrictions on Use of Information**

a. If the Contractor, in the performance of this contract, obtains access to information such as CPSC plans, reports, studies, data projected by the Privacy Act of 1974 (5 U.S.C. 552a), or personal identifying information which has not been released or otherwise made public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not: (a) release or disclose such information, (b) discuss or use such information for any private purpose, (c) share this information with any other party, or (d) submit an unsolicited proposal based on

such information. These restrictions will remain in place unless such information is made available to the public by the Government.

b. In addition, the Contractor agrees that to the extent it collects data on behalf of CPSC, or is given access to, proprietary data, data protected by the Privacy Act of 1974, or other confidential or privileged technical, business, financial, or personal identifying information during performance of this contract, that it shall not disclose such data. The Contractor shall keep the information secure, protect such data to prevent loss or dissemination, and treat such information in accordance with any restrictions imposed on such information.

#### **52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (July 2013)**

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

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Months of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d)(1) *Executive compensation of the prime contractor.* As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision [52.204-7](#)), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(2) *First-tier subcontract information.* Unless otherwise directed by the contracting officer, or as provided in paragraph (h) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, the Contractor shall report the following information at <http://www.fsrc.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrc.gov> to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

- (ii) Name of the subcontractor.
  - (iii) Amount of the subcontract award.
  - (iv) Date of the subcontract award.
  - (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
  - (vi) Subcontract number (the subcontract number assigned by the Contractor).
  - (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
  - (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
  - (ix) The prime contract number, and order number if applicable.
  - (x) Awarding agency name and code.
  - (xi) Funding agency name and code.
  - (xii) Government contracting office code.
  - (xiii) Treasury account symbol (TAS) as reported in FPDS.
  - (xiv) The applicable North American Industry Classification System code (NAICS).
- (3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fsr.gov>, if—
- (i) In the subcontractor's preceding fiscal year, the subcontractor received—
    - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execom.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$25,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g)(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

(End of clause)

#### **52.212-4 Contract Terms and Conditions -- Commercial Items (May 2015)**

(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 41 U.S.C. chapter 71, Contract Disputes. 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— System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

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

(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 41 U.S.C. 7109, 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 at 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. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 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, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations 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) System for Award Management (SAM).

(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 SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM 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 SAM database to ensure it is current, accurate and complete. Updating information in the SAM 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 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 SAM database;

(B) Comply with the requirements of Subpart 42.12 of the FAR;

(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 SAM 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 SAM record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM 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 SAM accessed through <https://www.acquisition.gov>.

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of Clause)

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (May 2015)**

(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) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Dec 2014)

(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) (Public Laws 108-77, 108-78 (19 U.S.C. 3805 note)).

(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 (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

\_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (41 U.S.C. 3509).

\_\_\_ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5) (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).

\_\_\_ (4) 52.204-10, Reporting Executive compensation and First-Tier Subcontract Awards (Jul 2013) (Pub. L. 109-282) (31 U.S.C. 6101 note).

\_\_\_ (5) [Reserved]

\_\_\_ (6) 52.204-14, Service Contract Reporting Requirements (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013) (31 U.S.C. 6101 note).

\_\_\_ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

\_\_\_ (10) [Reserved]

\_\_\_ (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).

\_\_\_ (ii) Alternate I (Nov 2011) of 52.219-3.

\_\_\_ (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

\_\_\_ (ii) Alternate I (Jan 2011) of 52.219-4.

\_\_\_ (13) [Reserved]

\_\_\_ (14) (i) 52.219-6, Notice of Total Small Business Aside (Nov 2011) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Nov 2011).

\_\_\_ (iii) Alternate II (Nov 2011).

\_\_\_ (15) (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.

\_\_\_ (16) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)).

\_\_\_ (17) (i) 52.219-9, Small Business Subcontracting Plan (Oct 2014) (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.
- \_\_\_ (iv) Alternate III (Oct 2014) of 52.219-9.
- \_\_\_ (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).
- \_\_\_ (19) 52.219-14, Limitations on Subcontracting (Nov 2011) (15 U.S.C. 637(a)(14)).
- \_\_\_ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- \_\_\_ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).
- \_\_\_ (22) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).
- \_\_\_ (23) 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (Jul 2013) (15 U.S.C. 637(m)).
- \_\_\_ (24) 52.219-30, Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (Jul 2013) (15 U.S.C. 637(m)).
- (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2014) (E.O. 13126).
- (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (28) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
- (29) 52.222-35, Equal Opportunity for Veterans (Jul 2014) (38 U.S.C. 4212).
- (30) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- (31) 52.222-37, Employment Reports on Veterans (Jul 2014) (38 U.S.C. 4212).
- (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- (33) (i) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

\_\_\_ (ii) Alternate I (Mar 2015) of 52.222-50, (22 U.S.C. chapter 78 and E.O. 13627).

\_\_\_ (34) 52.222-54, Employment Eligibility Verification (Aug 2013). (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.)

\_\_\_ (35) (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.)

\_\_\_ (36) (i) 52.223-13, Acquisition of EPEAT® -Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514

\_\_\_ (ii) Alternate I (Jun 2014) of 52.223-13.

\_\_\_ (37) (i) 52.223-14, Acquisition of EPEAT® -Registered Television (Jun 2014) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (Jun 2014) of 52.223-14.

\_\_\_ (38) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

\_\_\_ (39) (i) 52.223-16, Acquisition of EPEAT® -Registered Personal Computer Products (Jun 2014) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (Jun 2014) of 52.223-16.

X (40) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011) (E.O. 13513).

\_\_\_ (41) 52.225-1, Buy American--Supplies (May 2014) (41 U.S.C. chapter 83).

\_\_\_ (42) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

\_\_\_ (ii) Alternate I (May 2014) of 52.225-3.

\_\_\_ (iii) Alternate II (May 2014) of 52.225-3.

\_\_\_ (iv) Alternate III (May 2014) of 52.225-3.

\_\_\_ (43) 52.225-5, Trade Agreements (Nov 2013) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

\_\_\_ (44) 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).

\_\_\_ (45) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

\_\_\_ (46) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

\_\_\_ (47) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

\_\_\_ (48) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505), 10 U.S.C. 2307(f)).

\_\_\_ (49) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

X (50) 52.232-33, Payment by Electronic Funds Transfer— System for Award Management (Jul 2013) (31 U.S.C. 3332).

\_\_\_ (51) 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management (Jul 2013) (31 U.S.C. 3332).

\_\_\_ (52) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).

\_\_\_ (53) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

\_\_\_ (54) (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) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495)

\_\_\_ (2) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67.).

\_\_\_ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts) (May 2014) (29 U.S.C.206 and 41 U.S.C. chapter 67).

\_\_\_ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-- Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_\_ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67).

\_\_\_ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2014) (E.O. 13658).

\_\_\_ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792).

\_\_\_ (10) 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 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 (Apr 2010) (41 U.S.C. 3509).

(ii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.

(iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).

(vi) 52.222-35, Equal Opportunity for Veterans (Jul 2014) (38 U.S.C. 4212).

(vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(viii) 52.222-37, Employment Reports on Veterans (Jul 2014) (38 U.S.C. 4212).

(ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(x) 52.222-41, Service Contract Labor Standards (May 2014), (41 U.S.C. chapter 67).

(xi) \_\_\_\_ (A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

\_\_\_\_ (B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 E.O. 13627).

(xii) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.)

(xiii) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)

(xiv) 52.222-54, Employment Eligibility Verification (Aug 2013).

(xv) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2014) (E.O. 13658).

(xvi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xvii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xviii) 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)

### **52.217-8 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 thirty (30) calendar days.

(End of clause)

**52.227-11 Patent Rights-Ownership by the Contractor.**

As prescribed in [27.303\(b\)\(1\)](#), insert the following clause:

PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (MAY 2014)

(a) As used in this clause-

“Invention” means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act ([7 U.S.C. 2321](#), et seq.)

“Made” means-

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 ([26 U.S.C. 501\(c\)](#)) and exempt from taxation under section 501(a) of the Internal Revenue Code ([26 U.S.C. 501\(a\)](#)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the Contractor made in the performance of work under this contract.

(b) Contractor’s rights.

(1) Ownership. The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) License.

(i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor’s license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written

approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The Contractor's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR [27.302\(i\)\(2\)](#) and [27.304-1\(f\)](#).

(c) Contractor's obligations.

(1) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(d) Government's rights-

(1) Ownership. The Contractor shall assign to the agency, on written request, title to any subject invention-

(i) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.

(ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country.

(iii) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) License. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) Contractor action to protect the Government's interest.

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to-

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

(2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, “This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention.”

(f) Reporting on utilization of subject inventions. The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by [35 U.S.C. 202\(c\)\(5\)](#), the agency will not disclose that information to persons outside the Government without the Contractor’s permission.

(g) Preference for United States industry. Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

(h) March-in rights. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to [35 U.S.C. 203 and 210\(c\)](#), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it shall-

(1) Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with [35 U.S.C. 202\(e\)](#) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor.

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) Communications. [Complete according to agency instructions.]

(k) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

(2) The Contractor shall include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required by FAR [Subpart 27.3](#).

(3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(4) In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

(End of clause)

#### **52.232-40 Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)**

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable

contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of clause)