

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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SOURCE: 76 FR 42057, July 18, 2011, unless otherwise noted.

#### Subpart 1052.2—Texts of Provisions and Clauses

##### 1052.201-70 Contracting Officer's Technical Representative (COTR) appointment and authority.

As prescribed in 1001.670-6, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) APPOINTMENT AND AUTHORITY (AUG 2011)

(a) The COTR is \_\_\_\_\_ [insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COTR identified above, or a representative designated in writing. The term "tech-

nical direction" includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COTR does not have authority to issue technical direction that:

(1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;

(2) Constitutes a change as defined in the clause entitled "Changes";

(3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;

(4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;

(5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or

(6) Directs, supervises or otherwise controls the actions of the contractor's employees.

(d) Technical direction may be oral or in writing. The COTR must confirm oral direction in writing within five workdays, with a copy to the Contracting Officer.

(e) The Contractor shall proceed promptly with performance resulting from the technical direction issued by the COTR. If, in the opinion of the contractor, any direction of the COTR or the designated representative falls within the limitations of (c) above, the contractor shall immediately notify the Contracting Officer no later than the beginning of the next Government work day.

(f) Failure of the Contractor and the Contracting Officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled "Disputes."

(End of clause)

##### 1052.210-70 Contractor publicity.

As prescribed in 1009.204-70, insert the following clause:

CONTRACTOR PUBLICITY (AUG 2011)

The Contractor, or any entity or representative acting on behalf of the Contractor, shall not refer to the equipment or services furnished pursuant to the provisions of this contract in any news release or commercial advertising, or in connection with any news release or commercial advertising, without first obtaining explicit written consent to do

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so from the Contracting Officer. Should any reference to such equipment or services appear in any news release or commercial advertising issued by or on behalf of the Contractor without the required consent, the Government shall consider institution of all remedies available under applicable law, including 31 U.S.C. 333, and this contract. Further, any violation of this provision may be considered during the evaluation of past performance in future competitively negotiated acquisitions.

(End of clause)

**1052.219-18 Notification of competition limited to eligible 8(a) concerns—Alternate III (Deviation) (May 1998).**

In accordance with 1019.811-3(d)(3), substitute the following for the paragraph (c) in FAR 52.219-18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

**1052.219-72 Section 8(a) direct awards.**

As prescribed in 1019.811-3(f), insert the following clause:

**8(a) BUSINESS DEVELOPMENT PROGRAM AWARDS (JUN 2003)**

(a) This purchase/delivery/task order or contract is issued by the contracting activity directly to the 8(a) program participant/contractor pursuant to the Partnership Agreement between the Small Business Administration (SBA) and the Department of the Treasury. However, the Small Business Administration is the prime contractor and retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) Business Development program. The cognizant SBA district office is:

*[To be completed by the contracting officer at the time of award]*

(b) The contracting officer is responsible for administering the purchase/delivery/task order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase/delivery/task order or contract, to include providing the cognizant SBA district office with a signed copy of the purchase/delivery/task order or contract award within 15 days of the award. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing

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any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and,

(2) to adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting.

(End of clause)

**1052.219-73 Department of the Treasury Mentor-Protégé Program.**

As prescribed in 1019.202-70.(p), insert the following clause:

**DEPARTMENT OF THE TREASURY MENTOR-PROTÉGÉ PROGRAM (JUN 2003)**

(a) Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protégé Program. Mentor firms provide small business protégés with developmental assistance to enhance their capabilities and ability to obtain Federal contracts.

(b) Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses as defined in 13 CFR parts 121, 124, and 126.

Developmental assistance includes technical, managerial, financial, and other mutually beneficial assistance to aid protégé. Contractors interested in participating in the Program are encouraged to contact the Department of the Treasury Office of Small and Disadvantaged Business Utilization for further information.

(End of provision)

**1052.219-75 Mentor Requirements and Evaluation.**

As prescribed in 1019.202-70(p), insert the following clause:

**MENTOR REQUIREMENTS AND EVALUATION (AUG 2011)**

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's Office of Small and Disadvantaged Business Utilization (OSDBU) at the conclusion of the mutually agreed upon Program period, or the voluntary withdrawal by either party from the Program, whichever

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occurs first. At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé will formally brief the Department of the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.

(b) A mentor or protégé must notify the OSDBU and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm’s withdrawal from the Program. A mentor firm must notify the OSDBU and the contracting officer upon receipt of a protégé’s notice of withdrawal from the Program.

(c) Contracting officers may provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the non-price factors. If this incentive is used, the contracting officer shall include language in the solicitation indicating that this adjustment may occur.

(End of clause)

1052.228-70 Insurance requirements.

As prescribed in 1028.310-70 and 1028.311-2, insert a clause substantially as follows: The contracting officer may specify additional kinds (e.g., aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

INSURANCE (AUG 2011)

In accordance with the clause entitled “Insurance—Work on a Government Installation” [or “Insurance—Liability to Third Persons”] in Section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) Worker’s compensation and employer’s liability. The contractor shall, as a minimum, meet the requirements specified at FAR 28.307-2(a).

(b) General liability. The contractor shall, at a minimum, meet the requirements specified at FAR 28.307-2(b).

(c) Automobile liability. The contractor shall, at a minimum, meet the requirements specified at FAR 28.307-2(c).

(End of clause)

1052.232-7003 Electronic submission of payment requests.

As prescribed in 1032.7003, use the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (DATE TBD)

(a) Definitions. As used in this clause—

(1) “Payment request” means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), “Payment documentation and process” and the applicable Payment clause included in this contract.

(2) [Reserved]

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Internet Payment Platform (IPP). Information regarding IPP is available on the Internet at www.ipp.gov. Assistance with enrollment can be obtained by contacting the IPP Production Helpdesk via email ippgroup@bos.frb.org or phone (866) 973-3131.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer’s written authorization with each payment request.

(End of clause)

[77 FR 40305, July 9, 2012]

1052.234-2 Notice of Earned Value Management System—Pre-Award IBR—Alternate I AUG 2011

As prescribed in DTAR 1034.203, substitute the following paragraph (a) for paragraph (a) of the basic FAR clause:

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports the offeror’s self-validation that the EVMS complies with the ANSI Standard, as applicable.

(End of provision)

1052.234-3 Notice of Earned Value Management System—Post-Award IBR—Alternate I AUG 2011

As prescribed in DTAR 1034.203, substitute the following paragraph (a) for paragraph (a) of the basic FAR clause:

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports the offeror’s self-validation that the EVMS complies with the ANSI Standard, as applicable.

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(End of provision)

**1052.234-4 Earned Value Management System Alternate I AUG 2011**

As prescribed in DTAR 1034.203, substitute the following paragraph (a) for paragraph (a) of the basic FAR clause:

(a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) or has been determined through Contractor's self-validation to be compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.

(End of clause)

**1052.234-70 Notice of Earned Value Management System—Pre-Award IBR (Core) AUG 2011**

As prescribed in DTAR 1034.203, insert this provision in solicitations and awards that require the Contractor to use an earned value management system (EVMS) and for which the Government requires an IBR *prior to award*.

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports its self-validation that the EVMS used for this award complies with Core EVM criteria.

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedures for administration of the guidelines, as applied to subcontracts; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the con-

tracting officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for an EVMS before contract award.

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the requirements in paragraph (a) of this provision.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontracts have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS requirements.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designed by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of provision)

**1052.234-71 Notice of Earned Value Management System—Post-Award IBR (Core) AUG 2011**

As prescribed in DTAR 1034.203, insert this provision in solicitations and awards that require the contractor to use an earned value management system (EVMS) and for which the Government requires an IBR *after award*.

(a) The offeror shall provide either documentation that the Cognizant Federal Agency has determined that the proposed EVMS complies with the EVMS guidelines in ANSI/EIA Standard-748 (ANSI Standard) or documentation that supports its self-validation that the EVMS used for this award complies with Core EVM criteria.

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedures for administration of the guidelines, as applied to subcontracts; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the contracting officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for an EVMS before contract award.

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the requirements in paragraph (a) of this provision.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontracts have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS requirements.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designed by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of provision)

#### **1052.234-72 Core Earned Value Management System AUG 2011**

As prescribed in DTAR 1034.203, insert this clause in major investment solicitations and awards with DME that require a contractor to use an earned value management system (EVMS).

(a) The Contractor shall use an earned value management system (EVMS) that has either been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) or documentation that supports its validation that the EVMS used to manage this contract meets the following ANSI/EIA-748 criteria:

(1) (ANSI #1) Define the authorized work elements for the program. A work breakdown structure (WBS), tailored for effective internal management control, is commonly used in this process.

(2) (ANSI #2) Identify the program organizational structure including the major subcontractors responsible for accomplishing

the authorized work, and define the organizational elements in which work will be planned and controlled.

(3) (ANSI #3) Provide for the integration of the company's planning, scheduling, budgeting, work authorization, and cost accumulation processes with each other, and as appropriate, the program WBS and the program organizational structure.

(4) (ANSI #6) Schedule the authorized work in a manner that describes the sequence of work and identifies significant task interdependencies required to meet the needs of the program.

(5) (ANSI #7) Identify physical products, milestones, technical performance goals, or other indicators that will be used to measure progress.

(6) (ANSI #8) Establish and maintain a time-phased budget baseline, at the control account level, against which program performance can be measured. Initial budgets established for performance measurement will be based on either internal management goals or the external customer negotiated target cost including estimates for authorized but vaguely defined work. Budget for far-term efforts may be held in higher-level accounts until an appropriate time for allocation at the control account level. On government contracts, if an over-target baseline is used for performance measurement reporting purposes, prior notification must be provided to the customer.

(7) (ANSI #16) Record direct costs in a manner consistent with the budgets in a formal system controlled by the general books of account.

(8) (ANSI #22) At least on a monthly basis, generate the following information at the control account and other levels as necessary for management control using actual cost data from, or reconcilable with, the accounting system:

(i) Comparison of the amount of planned budget and the amount of budget earned for work accomplished. This comparison provides the schedule variance.

(ii) Comparison of the amount of the budget earned and the actual (applied where appropriate) direct costs for the same work. This comparison provides the cost variance.

(9) (ANSI #27) Develop revised estimates of cost at completion based on performance to date, commitment values for material, and estimates of future conditions. Compare this information with the performance measurement baseline to identify variances at completion important to management and any applicable customer reporting requirements, including statements of funding requirements.

(10) (ANSI #28) Incorporate authorized changes in a timely manner, recording the effects of such changes in budgets and schedules. In the directed effort prior to negotiation of a change, base such revisions on the

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amount estimated and budgeted to the program organizations. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVMS has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in paragraph (a), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary actions to meet the milestones in the Contractor's EVMS plan approved by the contracting officer.

(c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after contract award.

(d) The contracting officer may require an IBR upon the—

(1) Exercise of significant options; or

(2) Incorporation of major modifications.

(e) Unless a waiver is granted by the CFA, Contractor-proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor shall provide access to all pertinent records and data requested by the contracting officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: [Insert list of applicable subcontractors].

(End of clause)