

2. AMENDMENT/MODIFICATION NO. 0005 3. EFFECTIVE DATE See Block 16C 4. REQUISITION/PURCHASE REQ NO. OS201394 5. PROJECT NO. (If applicable) 1 23

6. ISSUED BY CODE ASPR-BARDA 7. ADMINISTERED BY (If other than Item 6) CODE ASPR-BARDA01
 ASPR-BARDA
 200 Independence Ave., S.W.
 Room 640-G
 Washington DC 20201
 ASPR-BARDA
 330 Independence Ave, SW, Rm G644
 Washington DC 20201

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)
 RESPIRONICS, INC 359940
 RESPIRONICS, INC.
 1010 MURRY RIDGE LN
 MURRYSVILLE PA 156688525
 CODE 359940 FACILITY CODE
 9A. AMENDMENT OF SOLICITATION NO. (x)
 9B. DATED (SEE ITEM 11)
 10A. MODIFICATION OF CONTRACT/ORDER NO. X HHSO100201400005C
 10B. DATED (SEE ITEM 13) 09/15/2014

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS
 The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended.
 Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required) Net Increase: \$546,746.00
 2017.1992001.25210

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.
 CHECK ONE
 A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
 B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
 X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF FAR 43.103 (a)(3) Bilateral - to reflect other agreements of the parties modifying the contract
 D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

Tax ID Number: [REDACTED]
 DUNS Number: [REDACTED]

The purpose of this modification is to revise the following:
 1) Article B.2. Type of Contract and Estimated Cost 2) Article B.3. Option Prices, 3) Article C.1. Statement of Work, 4) Article F.1. Period of Performance
 5) Article F.2. Deliverables 6) Article G.9 Indirect Cost Rates, 7) Article G.10 Establishment of Indirect Cost Rate, 8) Article I.1. General Clauses for a Cost-Reimbursement Portions of the Contract, 9) Article I.3. General Clauses for Firm Fixed-Price portions of the contract, 10) Article I.4. Reserved and 11) Section J List Attachments.
 Delivery Location Code: HHS/OS/ASPR

Continued ...
 Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)
 EG DRACOPANOS, BUSINESS LEADER SALIM K. ROBERTS
 15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED 16B. UNITED STATES OF AMERICA 16C. DATE SIGNED
 [Signature] 9/6/17 [Signature of Contracting Officer]

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
HHSO100201400005C/0005

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NAME OF OFFEROR OR CONTRACTOR
RESPIRONICS, INC 359940

ITEM NO (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	HHS/OS/ASPR 200 C St SW WASHINGTON DC 20201 US Appr. Yr.: 2017 CAN: 1992001 Object Class: 25210 FOB: Destination Change Item 2 to read as follows (amount shown is the obligated amount):				
2	New Model Initial Production Fully Kitted FDA-Approved AAHSV Ventilator plus Rugged Basic Pulse Oximeter and Colorimetric Co2 Intubation Monitor Amount: \$32,800,000.00 (Option Line Item) Add Item 3 as follows:	10000	EA	3,280.00	0.00
3	ASPR-17-03611 -- Modification to the base contract with Phillips Healthcare HHSO10020140005C Obligated Amount: \$546,746.00				546,746.00

ARTICLE B.2. TYPE OF CONTRACT AND ESTIMATED COST

- a. This Award is a hybrid contract with COST REIMBURSEMENT and FIRM FIXED PRICE contract line items (CLINS).
- b. The cost of the base period Cost Reimbursement (CR) contract is \$11,936,288.

The price of the base period Firm Fixed Price (FFP) contract is \$2,430,527.

Item	Description of Item	Total Price
CLIN 0001 Base (Article B.2) Cost Reimbursement	Development of an FDA 501(k) cleared Enhanced Ventilator (EV)	\$11,936,288
CLIN 0002 Base (Article B.2) Firm Fixed Price	Verification and Validation of an FDA 501(k) cleared Enhanced Ventilator (EV)	\$2,430,527
Total		\$14,366,815

- c. Upon the delivery and acceptance of the Firm Fixed Price Base Period Items described in SECTION C of the contract and identified in the schedule of charges below, the Government shall pay the Contractor in accordance with CLIN 0002 milestone payment schedule. The Government will review and approve or reject deliverables within 5 (five) business days of receipt. Government will provide basis for rejected deliverables. Contractor will revise and resubmit rejected deliverable within 5 days of rejection notice.

CLIN 0002 Milestone Payment Schedule

Milestones	Month	Amount	Cum
SP Manual and Quick Start Draft	Sep-17	100,000	100,000
Summative Testing Report (Laycaregiver & nonRT)	Sep-17	50,000	150,000
PP1 Build Report	Sep-17	50,000	200,000
EFS Verification Report	Sep-17	50,000	250,000
High Volume Surge Capable Mfg. Plan	Sep-17	75,000	325,000
Environmental Verification Report	Sep-17	50,000	375,000
Tech Report 1 MACA	Oct-17	50,000	425,000
PP1 v03 510(k) Software Release Design Review	Oct-17	250,000	675,000
510(k) Durability Testing Complete	Oct-17	125,000	800,000
EMC - Emissions Test Results	Oct-17	25,000	825,000
EMC - Automotive Test Results	Oct-17	25,000	850,000
EMC - Immunity Test Results	Oct-17	25,000	875,000
EMC - DOC 160G Test Results	Oct-17	25,000	900,000
System Performance Verification Report	Oct-17	50,000	950,000
BIST Functionality Verification Report	Oct-17	50,000	1,000,000
Tech Report 2 MACA	Nov-17	50,000	1,050,000
Alarms Verification Report	Nov-17	50,000	1,100,000
Measured & Calculated Parameters Verification Report	Nov-17	50,000	1,150,000
Safety Compliance Test Report	Nov-17	75,000	1,225,000
ME Stress Compliance Test Report	Nov-17	50,000	1,275,000
Power Management Verification Report	Nov-17	50,000	1,325,000

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Logging & Misc Verification Report	Nov-17	50,000	1,375,000
Connectivity Verification Report	Nov-17	50,000	1,425,000
Tech Report 3 MACA	Dec-17	50,000	1,475,000
Service Manual & SNS Maintenance Plan Submittal	Dec-17	50,000	1,525,000
SP Manual and Quick Start Guide Final	Dec-17	50,000	1,575,000
Tech Report 4 MACA	Jan-18	50,000	1,625,000
510(k) Submittal	Jan-18	100,000	1,725,000
General Requirements Verification Report	Jan-18	50,000	1,775,000
Therapy Modes Verification Report	Jan-18	50,000	1,825,000
User Interface Testing Verification Report	Jan-18	50,000	1,875,000
Tech Report 5 MACA	Feb-18	50,000	1,925,000
Tech Report 6 MACA	Mar-18	50,000	1,975,000
Tech Report 7 MACA	Apr-18	50,000	2,025,000
Tech Report 8 MACA	May-18	50,000	2,075,000
Risk Assessment Hazards Analysis and Verification	May-18	25,000	2,100,000
Final Verification Report	May-18	100,000	2,200,000
Tech Report 9 MACA	Jun-18	50,000	2,250,000
Released Patient Ready Prototype Unit Fully Kitted Final Configuration	Jun-18	100,000	2,350,000
Final Documentation Package	Jun-18	80,527	2,430,527
Design V&V Review			
Process Validation Records			
Design Validation Report			
Final Risk Assessment			
Validation Review Meeting Minutes			
Final Device Master Record			
List of Known/ Deferred Defects			
Process Master Validation Report			
Design History File Index			
Final Design Review Meeting Minutes			
Final Report			
Device Master Record			
PP1 Production Prototype Unit			

- d. The total amount for the CR base contract shall not exceed \$11,936,288 and the Government will not be responsible for any Contractor incurred costs that exceed this amount unless a modification to the contract is signed by the Contracting Officer which expressly increases this amount. For further provisions on funding, see the LIMITATION OF COSTS clause referenced in Part II, Contract Clauses.
- e. It is estimated that the currently allotted funds will cover performance of the contract through June 29, 2018.
- Refer to **Article F.1. Period of Performance**.
- f. The Contractor shall maintain records of all contract costs and such records shall be subject to the Audit and Records- Negotiation and Final Decisions on Audit Findings clauses of the General Clauses.

ARTICLE B.3. OPTION PRICES

- g. Unless the Government exercises its option, this contract consists only of the Base Period specified in the Statement of Work as defined in SECTIONS C and F, for the price set forth in ARTICLE B.2. of this contract.

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Pursuant to FAR Clause 52.217-7, Option for Increased Quantity-Separately Priced Line Item set forth in Part II, Section I. of this contract, the Government may, by unilateral contract modification, require the Contractor to perform the option set forth in the Statement of Work and also defined in Sections C and F of the contract. If the Government exercises this option, notice must be given at least 90 days prior to the expiration date of this contract. Delivery will commence on an agreed upon schedule if an option is exercised by the Government. If the option is exercised, the contract expiration date will be extended 21 months from the time the Option is exercised. If exercised, the option starts when the current contract performance period expires. The price of this contract will be increased as set forth in paragraph c., below.

- h. Upon the delivery and acceptance of the Option Items described in SECTION C of the contract and identified in the schedule of charges below, the Government shall pay the Contractor on a Firm Fixed Price basis the unit prices set forth below:

Option Fixed Price Items	Description of Option Item	Quantity (Units)	Unit Price	Total Price (FFP)
CLIN 0003 OPTION ONE	New Model Initial Production Fully Kitted FDA-Approved AAHSV Ventilator plus Rugged Basic Pulse Oximeter and Colorimetric Co2 Intubation Monitor	10,000	\$3,280	\$32,800,000

Payment schedule for the Option Items:

Milestone	Total
Complete manufacture and packaging and delivery of first 2,500 units	\$ 8,200,000
Complete manufacture and packaging and delivery of second 2,500 units	\$ 8,200,000
Complete manufacture and packaging and delivery of third 2,500 units	\$ 8,200,000
Complete manufacture and packaging and delivery of fourth 2,500 units	\$ 8,200,000
TOTAL	\$ 32,800,000

ARTICLE C.1. STATEMENT OF WORK

- Independently and not as an agent of the Government, the Contractor shall furnish all the necessary services, qualified personnel, material, equipment, and facilities, not otherwise provided by the Government as needed to perform the **Statement of Work originally dated May 28, 2014, and revised May 17, 2016, set forth in SECTION J, Attachment Number 1, attached hereto and made a part of this contract.**

ARTICLE F.1. PERIOD OF PERFORMANCE

- a. The period of performance of this contract shall be from **September 15, 2014 through June 29, 2018.**

ARTICLE F.2. DELIVERABLES

Satisfactory performance of the final contract shall be deemed to occur upon performance of the work described in the Statement of Work Article in SECTION C of this contract and upon delivery and acceptance by the Contracting Officer, or the duly authorized representative, of the following items in accordance with the stated delivery schedule:

- a. The items specified below as described in the REPORTING REQUIREMENTS Article in SECTION C of this contract will be required to be delivered F.O.B. Destination as set forth in FAR 52.247-35, F.O.B.DESTINATION, WITHIN CONSIGNEES PREMISES (APRIL 1984), and in accordance with and by the dates specified below:

DELIVERABLES LIST

SOW Ref	Revised Due Date (from CA)	Deliverable	Description
3.1.1	3mo	Product Requirements Document	Specific product functional, environmental, safety, and regulatory requirements.
3.1.1	3mo	Quality Information	Historical quality information of related products, including CAPAs, MDRs, complaints, etc. Design Quality Engineering will work with Quality Systems to obtain the appropriate information.
3.2.1	3mo	Project Plan	Provides design and development plans, and captures strategies of functional groups.
3.2.2	3mo	Risk Assessment - Initial Hazards	Identifies potential harms, hazards, and risks which are classified by severity.
		Analysis	
D.2.2.1.1	4mo	Requirements and Planning Review Minutes	Review held at the end of the Requirements and Planning phase.
4.1.1	5mo	System Architecture Document	Specifies the major components in the product and the external interfaces to other products, accessories, and/or users in their environments.
4.3.2	6mo	Hardware Specification Documents	Specifies electrical and mechanical sub- system requirements, including test and acceptance criteria where necessary.
4.1.2	6mo	User Interface Document	Describes the initial user interface with the device controls and displays.
4.3.3	6mo	Software Requirement Specification	Provides requirements associated with ventilator software, including details for test planning.
4.3.1	6mo	Risk Assessment - Detailed Hazards Analysis	Review and update the Risk Assessment from the previous phase to incorporate additional risks and control measures defined during system design activities.
4.4.1	6mo	Software Development Plan	Describes how engineering will develop software, including iteration plans, configuration management, and software quality assurance.
4.4	6mo	Design Verification Plan	Describes the approach and specific testing that will be conducted for appropriate V&V and compliance testing. Will identify 3rd party test approach and gain BARDA approval
4.4	6mo	Reliability Plan	Sets out the reliability assurance activities that will be undertaken in conjunction with the development team to assure that that the design meets or exceeds its specified reliability goals.
4.4	6mo	Risk Management Plan	Defines the specific project activities that will capture and assess safety risks, define and verify control measures.
4.4	6mo	Regulatory Plan	Presents the approach that will be taken to obtain any necessary regulatory approvals.
4.4.1	6mo	Labeling Plan	Presents the approach to assure proper labeling and language translations for the anticipated market.
4.4.1	6mo	Clinical Plan	Presents the general approach that will be used in the clinical analysis of the product.
4.4.1	6mo	Global Sourcing Plan	Plans for new suppliers, new 7.9, and/or new technologies.
4.4.1	6mo	Manufacturing Plan	Defines the plans for manufacturing to include activities for developing the facilities, processes, and equipment for production.

4.4.1	6mo	Service Plan	Plan to handle technical service for the products, including field repairs, spare parts, and service manuals. Includes development of training for service technicians. May also include product support.
4.4.1	6mo	Customer Support and User Training Plan	Provides initial plans for product launch to establish special requirements related to training materials for clinician and inexperienced care providers with limited or no respiratory training. .
4.4	6mo	Human Factors / Validation Plan	The Human Factors plan presents the planned human factors engineering (HFE) activities the project. Planned activities are designed to ensure that the product is safe and effective for its intended use and ensure the usability of the product
D.2.2.1.2	6mo	Initial Product Cost Target Allocation	Captures initial product cost targets and allocates budget percentage across major architectural components.
D.2.2.1.2	6mo	System Design Review Minutes	Reviews the results of all the activities and issues associated with System Design to assure that the project is prepared to proceed into detailed design.
5.1.3	12mo	EB1 Engineering Build Package & Report	Provides record of the configuration of engineering or pre-production devices, including design drawings, assembly process information, supply, and people considerations.
5.2.3	26mo	EB2 Engineering Build Package & Report	Provides record of the configuration of engineering or pre-production devices, including design drawings, assembly process information, supply, and people considerations.
5.3.4	28mo	EB3 Engineering Build Package & Report	Provides record of the configuration of engineering or pre-production devices, including design drawings, assembly process information, supply, and people considerations.
5.3.2	32mo	Software Design Descriptions	Describes the detailed design of the ventilator software including the definition of modules and their interfaces, including the Communication Means Device (CMD).
D.5.1	13mo	EB1 Technical Design Review Records	Documents the results of reviews, including a summary of what reviews were conducted (files, reviewers, issues). Includes code review meeting minutes
D.5.2	26mo	EB2 Technical Design Review Records	Documents the results of reviews, including a summary of what reviews were conducted (files, reviewers, issues). Includes code review meeting minutes
5.3.1	32mo	Hardware Design Descriptions	Describes the detailed design of the ventilator hardware including the definition of components, sub-assemblies and their interfaces.
5.1.1	32mo	Detailed Design Analysis (DFMEA for each sub-component identified)	Documents the analysis of the detailed designs, components, etc. May include multiple deliverables to cover electrical and mechanical analyses such as dFMEAs.
5.6.2	32mo	Risk Assessment - Detailed Hazards Analysis and Mitigation Control Measures	Captures all risk controls identified in detailed design phase. Includes the following: Risk Matrix; Key Components List; Usability File; Product Security Risk Assessment; and Privacy Impact Assessment.
5.6.3	32mo	Design V&V Test Procedures	Documents the test procedures that will be used to verify product requirements. Add rows as necessary.
5.6.3	32mo	Design V&V Trace Matrix	Provides trace matrix between requirements and V&V activities, test procedures, reports. Add rows as necessary.
D.2.2.2.3	32mo	Product Cost Estimates	Captures estimated component and assembly costs based on design documentation produced in the detailed design phase.
D.2.2.2.3	32mo	Detailed Design Review Minutes	Reviews items associated with Detailed Design phase.
5.1.4	16mo	One Ventilator Prototype	EB2 Prototype Unit
6.1	29mo	One Ventilator Prototype	PP1 Production Prototype Unit

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ARTICLE G.9. INDIRECT COST RATES

In accordance with Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clause 52.216-7 (d)(2), Allowable Cost and Payment incorporated by reference in this contract in PART II, SECTION I. The negotiated rate for the CR portion of the contract pertains to this contract only; the indirect rate below is not a Government-wide negotiated rate.

ARTICLE G.10. ESTABLISHMENT OF INDIRECT COST RATE

The final negotiated fixed rate of all indirect costs for the cost reimbursement portion of this contract is 58.00%.

ARTICLE I.1. GENERAL CLAUSES FOR A COST-REIMBURSEMENT PORTIONS OF THE CONTRACT

(CLIN 0001)

ARTICLE I.3. GENERAL CLAUSES FOR FIRM FIXED-PRICE PORTIONS OF THE CONTRACT (CLIN0002 AND 0003) **ARTICLE I.4. – RESERVED****SECTION J – LIST ATTACHMENTS**

The following documents are attached and incorporated in this contract:

1. Statement of Work, dated 5/17/2014, 43 pages.

Section I – Contract Clauses

- **FAR 52.252-2, CLAUSES INCORPORATED BY REFERENCE (FEBRUARY 1998)**

FAR Clauses Incorporated by Reference

52.202-1 - Definitions (Nov 2013)

52.203-3, Gratuities (Apr 1984)

52.203-5 - Covenant Against Contingent Fees (May 2014)

52.203-6 - Restrictions on Subcontractor Sales to the Government (Sep 2006)

52.203-7 - Anti-Kickback Procedures (May 2014)

52.203-8 - Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)

52.203-10 - Price or Fee Adjustment for Illegal or Improper Activity (May 2014)

52.203-12 - Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)

52.203-13 – Contractor Code of Business Ethics and Conduct (Oct 2015)

52.204-4 - Printed or Copied Double-Sided on Recycled Paper (May 2011)

52.204-7 – System for Award Management (Jul 2013)

52.209-6 - Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

52.211-5 - Material Requirements (Aug 2000)

52.215-2 - Audit and Records - Negotiation (Oct 2010)

52.215-8 - Order of Precedence - Uniform Contract Format (Oct 1997)

52.215-10 - Price Reduction for Defective Cost or Pricing Data (Aug 2011)

52.215-12 - Subcontractor Cost or Pricing Data (Oct 2010)

52.215-14 - Integrity of Unit Prices (Oct 2010)
52.215-15 - Pension Adjustments and Asset Reversions (Oct 2010)

52.215-18 - Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) other than Pensions (Jul 2005)
52.215-19 - Notification of Ownership Changes (Oct 1997)
52.215-21 - Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (Oct 2010)
52.219-16 - Liquidated Damages – Subcontracting Plan (Jan 1999)
52.222.3 - Convict Labor (Jun 2003)
52.222-19 - Child Labor – Cooperation with Authorities and Remedies (Feb 2016)
52.222-20 -Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (May 2014)
52.222-21 - Prohibition of Segregated Facilities (Apr 2015)
52.222-26 - Equal Opportunity (Apr 2015)
52.222-35 - Equal Opportunity for Veterans (Oct 2015)
52.222-36 – Equal Opportunities for Workers Disabilities (Jul 2014)
52.222-37 - Employment Reports on Veterans (Feb 2016)
52.222-50 - Combating Trafficking in Persons (mar 2015)
52.222-54 - Employment Eligibility Verification (Oct 2015)
52.223-6 - Drug-Free Workplace (May 2001)
52.225-13 - Restrictions on Certain Foreign Purchases (Jun 2008)
52.225-25 – Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications (Oct 2015)
52.227-1 - Authorization and Consent, Alternate I (Apr 1984) (Dec 2007)
52.227-2 - Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)
52.227-14 - Rights in Data – General (May 2014) Alternate II (Dec 2007)
52.229-3 - Federal, State and Local Taxes (Feb 2013)
52.232-1 - Payments (Apr 1984)
52.232-8 - Discounts for Prompt Payment (Feb 2002)

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52.232-9 - Limitation on Withholding of Payments (Apr 1984)
52.232-11 - Extras (Apr 1984)
52.232-17 - Interest (Over \$100,000) (May 2014)
52.232-23 - Assignment of Claims (May 2014)
52.232-25 - Prompt Payment (Jul 2013)
52.232-33 - Payment by Electronic Funds Transfer—System for Award Management (Jul 2013)
52.233-1 - Disputes (May 2014)
52.233-3 - Protest After Award (Aug 1996)
52.233-4 - Applicable Law for Breach of Contract Claim (Oct 2004)
52.242-13 - Bankruptcy (Jul 1995)
52.243-1 - Changes – Fixed Price (Aug 1987)
52.244-6 - Subcontracts for Commercial Items (Jun 2016)
52.245-1 - Government Property (Apr 2012)
52.246-23 - Limitation of Liability (Feb 1997)
52.249-2 - Termination for Convenience of the Government (Fixed-Price) (Apr 2012)
52.249-8 - Default (Fixed-Price Supply and Service) (Apr 1984)
52.253-1 - Computer Generated Forms (Jan 1991)

**• DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION
REGULATION(HHSAR)
(48 CFR, CHAPTER 3) CLAUSES:**

HHSAR Clauses Incorporated by Reference
352.203-70 - Anti-Lobbying (Dec 2015)
352.270-4b - Protection of Human Subjects (Dec 2015)
352.270-5a – Notice of Offerors of equipment for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals (Dec 2015)

• FAR CLAUSES IN FULL TEXT

52-203-14 Display of Hotline Poster(s) (Oct 2015)

c. Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

d. Display of fraud hotline poster(s). Except as provided in paragraph (c)—

- During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—
 - Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
 - Any DHS fraud hotline poster subsequently identified by the Contracting Officer.
- Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.
- Any required posters may be obtained as follows:

Poster(s)	Obtain from
HHS Contractor Code of Ethics and Business Conduct Poster	oig.hhs.gov/fraud/reportfraud/OIG_Hotline_Poster.pdf or see Attachment 3

(Contracting Officer shall insert—

- (d) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and
- (e) The website(s) or other contract information for obtaining the poster(s).)

e. If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

f. *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5.5 million, except when the subcontract—

- Is for the acquisition of a commercial item; or
- Is performed entirely outside the United States.

(End of clause)

**52.219-8 – Utilization of Small Business Concerns
(Oct 2014)**

(a) *Definitions.* As used in this contract--

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern, consistent with 13 CFR 124.1002," means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

"Veteran-owned small business concern" means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d)

(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

(End of clause)

52.219-9 -- Small Business Subcontracting Plan (Oct 2015), Alternate II (Oct 2001).

(a) This clause does not apply to small business concerns.

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

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626 (e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business concerns, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and with women- owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran- owned small

business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an

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identification of the types planned for subcontracting to --

- (i) Small business concerns,
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns, and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with --

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility with further subcontracting possibilities) to adopt a plan similar to the plan that complies with the requirements of this clause.

(10) Assurances that the offeror will --

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with the paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating --

(A) Whether small business concerns were solicited and if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why

not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and if not, why not;

(F) Whether women-owned small business concerns were solicited and if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact --

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through --

(A) Workshops, seminars, training, etc., and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small

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business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided --

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or

rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to

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those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of Clause)

Alternate II (Oct 2001). As prescribed in 19.708(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for

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each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

52.225-5 - Trade Agreements (Feb 2016)

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

"Caribbean Basin country end product"

(1) Means an article that— (i)

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX Goods Eligible for Special

Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Saint Eustatius, Saint Maarten, or Trinidad and Tobago).

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country end product” means an article that--

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

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"Least developed country end product" means an article that--

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made end product" means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"WTO GPA country end product" means an article that--

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) *Delivery of end products.* The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(End of clause)

Helix Milestone Schedule – 25May17 Update

