

Posting Date: March 4, 2024

Closing Date: March 14, 2024 11:30 a.m. ET

Reference Number: 24-008918

To: NCI Bid Board

From: Morgan Oliver
NCI CCR P-ARC
morgan.oliver@nih.gov

Subject: NCI Bid Board Posting – Alterations in mRNA and lncRNA after single dose and multifractionated radiation injury in p53 wild type and p53 mutant breast cancer cell lines

At the National Cancer Institute (NCI), the Radiation Oncology Branch (ROB) exists to plan and conduct pre-clinical and clinical research on the biologic and therapeutic effects of radiation administered alone or in combination with other modalities of treatment; to develop novel technology and imaging based approaches for radiation oncology; to investigate the natural history of disease to understand and evaluate means of diagnostic assessment for the purpose of optimizing treatment selections; and to provide radiation therapy as well as general oncology consultations for patients admitted to other NIH Clinical Research Center (CRC) clinical services, in a collaborative approach.

The primary objective is to examine and identify the complex mRNA expression changes associated with fractionated and single dose radiation for the discovery of markers and druggable pathways in the breast cancer cell lines. Results of these experiments will provide critical data to determine how to best harness different properties of ionizing radiation to achieve better therapeutic results. It will also aid in understanding how a common mutation (p53 mutation) in cancers may impact radiation response and subsequent therapeutic options. This work is meant to benefit cancer patients.

The National Cancer Institute plans to purchase Alterations in mRNA and lncRNA after single dose and multifractionated radiation injury in p53 wild type and p53 mutant breast cancer cell lines from Genus Biosystems, Inc, Northbrook, IL to perform this work. This is not a request for competitive quotation. However, if any interested party believes it can meet the attached requirements, it may submit a statement of capabilities. The capability statement must be in writing and must contain information and material in sufficient detail to allow NCI to determine if the party can fully meet this requirement. The capability statement must be received in the contracting office by 11:30 AM on March 14, 2024, ET. A determination by the Government not to compete this requirement based upon responses to this notice is solely within the discretion of the Government. Information received will be considered solely for the purpose of determining whether to conduct a competitive procurement. No vendor contact can supply these specific kits.

Sole Source Justification:

An internet search was conducted and there are no other commercially available companies with this specific expertise, commitment to technical excellence and staff with the highest qualifications who have a clear understanding of the lab's current and ongoing projects. Microarray analysis from Genus has been unparalleled with respect to quality control, accuracy, and reproducibility compared to all other tested platforms. Therefore, To ensure consistency with our prior experiments in prostate cancer cell lines which also received different radiation dose regimens, it is essential to use Genus' service again. This will allow for easier backwards comparison of data with previous results.

Attached Documents:

SF18

Statement of Work

FAR Clause 52.213-4 Simplified Acquisitions Terms and Conditions (JAN 2014) is applicable and available in full text upon request

REQUEST FOR QUOTATION <i>(THIS IS NOT AN ORDER)</i>		THIS RFQ <input type="checkbox"/> IS <input checked="" type="checkbox"/> IS NOT A SMALL BUSINESS SET-ASIDE		PAGE OF 1	PAGES 1
1. REQUEST NUMBER POTS 24-008918	2. DATE ISSUED 03/4/2024	3. REQUISITION/PURCHASE REQUEST NUMBER POTS 24-008918	4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1	RATING	
5a. ISSUED BY			6. DELIVER BY (Date) 05/01/2024		
5b. FOR INFORMATION CALL (NO COLLECT CALLS)			7. DELIVERY		
NAME Morgan Oliver		TELEPHONE NUMBER		<input type="checkbox"/> FOB DESTINATION <input checked="" type="checkbox"/> OTHER (See Schedule)	
		AREA CODE 240	NUMBER 760-6147	9. DESTINATION	
8. TO:			a. NAME OF CONSIGNEE Michelle Bylicky 240-858-3700		
a. NAME		b. COMPANY Genus Biosystems, Inc		b. STREET ADDRESS 10 Center Dr, Rm B3B406	
c. STREET ADDRESS 1808 Janke Drive, Unit M			c. CITY Bethesda		
d. CITY Northbrook,		e. STATE IL	f. ZIP CODE 60062	d. STATE MD	e. ZIP CODE 20892
10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE IN BLOCK 5a ON OR BEFORE CLOSE OF BUSINESS (Date) 02/22/2024		IMPORTANT: This is a request for information and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it to the address in Block 5a. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this quotation or to contract for supplies or service. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotation must be completed by the quoter.			

11. SCHEDULE (Include applicable Federal, State and local taxes)

ITEM NUMBER (a)	SUPPLIES/SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)
1	<p>Gene Expression Standard Service - 30 Samples, 4 slides/32 arrays</p> <p>Includes the following: -RNA Isolation Service -miRNA Exp. Standard Service -High Resolution Scanning -Quality Control Analysis -Data Normalization -Initial Report and Analysis</p> <p>Notice of Intent: If submitting a capability statement, please email only 1 copy of the technical capability statement to Morgan Oliver at morgan.oliver@nih.gov</p> <p>See attached statement of need.</p> <p>This will be awarded as a Firm-Fixed Price Contract</p>	30			0.00
12. DISCOUNT FOR PROMPT PAYMENT		a. 10 CALENDAR DAYS (%)	b. 20 CALENDAR DAYS (%)	c. 30 CALENDAR DAYS (%)	d. CALENDAR DAYS
				0.00	NUMBER PERCENTAGE

NOTE: Additional provisions and representations are are not attached.

13. NAME AND ADDRESS OF QUOTER			14. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION		15. DATE OF QUOTATION	
a. NAME OF QUOTER			16. SIGNER		b. TELEPHONE	
b. STREET ADDRESS						
c. COUNTY			a. NAME (Type or print)		AREA CODE	
d. CITY		e. STATE	f. ZIP CODE	c. TITLE (Type or print)		NUMBER

STATEMENT OF WORK (SOW)

Instructions: This document should be used for the acquisition of SERVICES. Instructions (and sample language) for completion are in red, and should be excluded from the completed document.

1.0 TITLE

Alterations in mRNA and lncRNA after single dose and multifractionated radiation injury in p53 wild type and p53 mutant breast cancer cell lines

2.0 BACKGROUND

Our lab has previously used microarray analysis produced by GenUs to study the impact of single dose (10 Gy) and multifractionated (10 x 1 Gy) radiation on mRNA and lncRNA expression in prostate cancer cell lines (PC3, DU145, LnCAP) at short term time points (24 hour) and long term time points (2 months) to determine radiation induced targets. We found that genetic background, radiation dose regiment and time after radiation impacted mRNA expression. We demonstrated that tumors which received single dose radiation previously were susceptible to certain chemotherapy agents compared to un-irradiated cells. Our next goal is to understand if these same radiation doses can cause similar changes in our breast cancer cell lines (MDA-MB-175-VII, SKBR3) which can be exploited to help cancer patients by more effectively killing tumor cells. Further, understanding the role of p53 across tumor cells may help find similar radiation-inducible targets across these cancer lines. Because our work has previously been performed using microarray analysis with GenUs it would be most expedient to use this company again so data from our prostate cancer cells can be compared to the breast cancer cell lines with a minimum of confounding variables.

2.1 OBJECTIVE

Hypothesis: Radiation response involves different pathways for different radiation regimens and for changes in the status of p53, a well-known tumor suppressor who also impacts cell cycle, cell death and senescence pathways, hence different mRNA and lncRNA expression profiles are induced. We plan to examine and identify the complex mRNA expression changes associated with fractionated and single dose radiation for the discovery of markers and druggable pathways in our breast cancer cell lines. Results of these experiments will provide critical data to determine how to best harness different properties of ionizing radiation to achieve better therapeutic results. It will also aid in understanding how a common mutation (p53 mutation) in cancers may impact radiation response and subsequent therapeutic options. This work is meant to benefit cancer patients.

3.0 SCOPE

The contractor shall prepare high quality RNA and cDNA using samples provided by NCI from a Short term (24h) and long term (1 month, 2 month) culture of human breast cancer cell samples. To obtain a global assessment of changes that occur in the samples treated with radiation, mRNA and expression profiles will be analyzed using the Agilent Human gene expression mRNA Kit for 30 samples. Data analysis will include a pathway analysis to identify differences in expression of relevant mRNA targets of microRNAs. Changes in expression of selected mRNA will be confirmed by real-time RT-PCR analysis.

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Breast cancer cells have not been fully collected. This process is estimated to take another 3 months. RNA from the samples will be isolated by the contractor in one shipment. Prior to this samples will be stored in -80 freezer. RNA prepared from a total of 30 samples will be sent to the contractor and shall be used for mRNA and lncRNA microarray analysis.

4.0 CONTRACT REQUIREMENTS/ AND PERSONNEL QUALIFICATIONS

The core strength and sole focus of GenUs BioSystems, Inc. is expression profiling on microarrays. GenUs uses unique and proprietary protocols and systems to provide highly sensitive and reproducible results of gene expression studies for total RNA starting quantities of as little as 50 picograms. GenUs BioSystems is the only vendor that we are aware of that provides high performance microarray metrics for sensitivity, dynamic range, and reproducibility with extremely small amounts of starting material. Their service includes gene expression profiling: consisting of amplification of RNA, hybridization to microarrays, and data. The purpose of this requirement is to provide full-service gene expression analysis using unique and proprietary protocols and systems developed to provide highly sensitive and reproducible Gene Expression results for Total RNA starting quantities of as little as 50 picograms. The company offers three tiers of processing various quantities of Total RNA. The first tier involves a single round of amplification (standard procedure, established in FDA-sponsored MAQC study, 2006) to generate labeled material to hybridize to the microarray platform. This first tier of processing can work with as little as 20 ng of Total RNA sample. The second tier of processing utilizes a double amplification process and generates enough labeled material to run multiple technical replicates for each sample. GenUs can routinely work with less than 1.0 nanogram of starting material with this method and can go down to 50 picograms of Total RNA with our 3rd tier of amplification methods. GenUs is the only vendor that we are aware of that consistently provides high performance array metrics for sensitivity, dynamic range, and reproducibility similar to what we get with single round amplification/labeling that is maintained for all three tiers of processing, dependent on amount of starting material. Protocol consists of established processes such as sample recovery, sample handling and preparation, utilization of various reagents and enzymatic reactions, application of samples to the microarray, post-treatment of the array, scanning and image capture, and statistical analysis of the data. Extensive qualification and quantification processes ensure high caliber results. The entire procedure requires a sophisticated laboratory with highly skilled laboratory technicians to carry out the multiple parts of the experiment. Highly specific mRNA expression arrays will be used by the Contractor as were used in the previous studies (PO #: 261201800515P, PO #: 261201800555P, and PO #: 75N91019P00151). By using the same platform microarray analysis will allow us to compare our previous data to our current experiments. Due to variability and limited size of samples the ability to generate consistent results from difficult sample conditions is a requirement. In addition, in order to be able to expand and complete the ongoing research using these treatments, the micro-array analysis must be compatible with previous experiments processed by GenUs Biosystems. Changing variables at this time will be detrimental to current gene expression studies because we are planning to compare the current data sets to the previous studies.

The Contractor shall perform the following tasks:

- Company must provide highly sensitive and reproducible results of gene expression studies for total RNA starting quantities of as little as 50 picograms. GenUs is the only lab that we are aware of that provides high performance microarray metrics for sensitivity, dynamic range, and reproducibility with extremely small amounts of starting material.
- Company must provide unlimited up-front consulting to determine the best experimental design and sample handling for the upcoming study prior to submitting samples.
- Company must be able to provide processes such as sample recovery, sample handling and preparation, utilization of various reagents and enzymatic reactions, application of samples to the microarray, post-treatment of the array, scanning and image capture, and statistical analysis of the data.

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- Company must offer full services for Agilent gene expression microarrays which will allow seamless merging of previous data from multiple experiments. The Company must provide us with a comprehensive data analysis and be willing to give support for exclusive and unlimited data analysis and consulting.

- The company must be able to generate consistent results from difficult sample conditions (variability and limited sample size).

- In addition, in order to be able to expand and complete the ongoing research using these treatments, the microarray analysis must be compatible with previous experiments.

The core strength and sole focus of the contractor is expression profiling on microarrays. The contractor shall use unique and proprietary protocols and systems. Estimated value of \$23,520.00. Highly specific mRNA expression arrays will be used by GenUs BioSystems as were used in the previous studies for the minipig blood samples. By using the same platform microarray analysis will allow us to compare our previous data from the whole blood analysis. Due to variability and limited size of samples the ability to generate consistent results from difficult sample conditions is a requirement. Previous work has been done using this contractor and to minimize variability in data analysis this contractor must be utilized for this next set of experiments.

5.0 TYPE OF ORDER

This is a firm fixed price purchase order.

6.0 PERIOD OF PERFORMANCE

The period of performance shall be for six months from arrival of sample shipment. The anticipated period is 5/1/24-11/1/24

7.0 PLACE OF PERFORMANCE

Services will be performed at GenUs BioSystems, Inc.
1808 Janke Drive, Unit M • Northbrook, IL 60062

8.0 REPORT(S)/DELIVERABLES AND DELIVERY SCHEDULE

The samples will be shipped in a single batch, and the contractor will isolate high quality RNA and shall assess the quality of the 30 RNA samples. After completing this procedure, the contractor shall notify the project coordinator at Radiation Oncology Lab, NCI, NIH of the result by providing pictures of the gel and graphs. After the quality assessment, the contractor shall amplify the RNA using in vitro transcription and again assess the quality of the cDNA before the actual labeling of the chips. Once the experimental procedure is done, the contractor shall do the data analysis. The length of the experimental process and discussions should be approximately 50 days after receiving the shipment; this will lead to the acceptance of the analysis criteria by the NCI Lab Radiation Oncology Lab, NCI, NIH. The contractor shall then do the final statistical analysis and send the data to the NCI. This includes master list with both up and down regulated genes with fold change and p value, Gene Ontology classifications, Venn diagrams of different combinations and heat maps of our interest through downloadable internet files and in actual CDs sent by FedEx. Contractor will retain residual samples until the paper based on these results is published and then destroy.

STATEMENT OF WORK (SOW)

<i>DELIVERABLE</i>	<i>DELIVERABLE DESCRIPTION / FORMAT REQUIREMENTS</i>	<i>DUE DATE</i>
<u>Task 1</u>	Quality Assessment: pictures of RNA gels and graphs	30 days after shipment arrival
<u>Task 2</u>	Data Analysis: master list of up and downregulated genes, fold change, p value, Gene Ontology classifications, venn diagrams	50 days after shipment arrival
<u>Task 3</u>	Help with data submission once manuscript is prepared	6 months after shipment arrival

9.0 PAYMENT

Payment shall be made by purchase order. Payment authorization requires submission and approval of invoices to the COR and NIH OFM, in accordance with the attached payment provisions listed below:

The following clause is applicable to all Purchase Orders, Task or Delivery Orders, and Blanket Purchase Agreement (BPA) Calls: PROMPT PAYMENT (JUL 2013) FAR 52.232-25. Highlights of this clause and NIH implementation requirements follow:

I. Invoice Requirements

- A. An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. A proper invoice is an "Original" which must include the items listed in subdivisions 1 through 12, below, in addition to the requirements of FAR 32.9. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, dairy products, edible fats, or oils) with a statement of the reasons why it is not a proper invoice. (See exceptions under II., below.) Untimely notification will be considered in the computation of any interest penalty owed the Contractor.
1. Vendor/Contractor: Name, Address, Point of Contact for the invoice (Name, title, telephonenumber, e-mail and mailing address of point of contact).
 2. Remit-to address (Name and complete mailing address to send payment).
 3. Remittance name must match exactly with name on original order/contract. If the Remittance name differs from the Legal Business Name, then both names must appear on the invoice.

STATEMENT OF WORK (SOW)

4. Invoice date.
5. Unique invoice #s for all invoices per vendor regardless of site.
6. NBS document number formats must be included for awards created in the NBS: ContractNumber; Purchase Order Number; Task or Delivery Order Number and Source Award Number (e.g., Indefinite Delivery Contract number; General Services Administration number); or, BPA Call Number and BPA Parent Award Number.
7. Unique Entity Identifier (UEI) which is in the System for Award Management (SAM) and replaces the Dun & Bradstreet Data Universal Numbering System (DUNS) number.
8. Federal Taxpayer Identification Number (TIN). In those rare cases where a contractor does not have a UEI number or TIN, a Vendor Identification Number (VIN) must be referenced on the invoice. The VIN is the number that appears after the contractor's name on the face page of the award document.
9. Identify that payment is to be made using a three-way match.
10. Description of supplies/services **that match** the description on the award, by line billed.*
11. Freight or delivery charge must be billed as shown on the award. If it is included in the item price do not bill it separately. If identified in the award as a separate line item, it must be billed separately.
12. Quantity, Unit of Measure, Unit Price, Extended Price of supplies delivered or services performed, as applicable, and that **match** the line items specified in the award.*

NOTE: If your invoice must differ from the line items on the award, please contact the Contracting Officer before submitting the invoice. A modification to the order or contract may be needed before the invoice can be submitted and paid.

Shipping costs will be reimbursed only if authorized by the Contract/Purchase Order. If authorized, shipping costs must be itemized. Where shipping costs exceed \$100, the invoice must be supported by a bill of lading or a paid carrier's receipt.

B. The Contractor shall submit invoices to the Department of Treasury's Invoice Processing Platform (IPP) at <https://www.ipp.gov> with a copy to the approving official, as directed below.

The Contractor shall submit a copy of the electronic invoice to the following Approving Official (Contracting Officer) and Contracting Officer's Representative:

Approving Official: Contracting Officer
Name- Email Address-

Contracting Officer's Representative
Name- Email Address-

II. Invoice Payment

A. Except as indicated in paragraph B., below, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

STATEMENT OF WORK (SOW)

1. The 30th day after the designated billing office has received a proper invoice.
2. The 30th day after Government acceptance of supplies delivered or services performed.

B. The due date for making invoice payments for meat and meat food products, perishable agricultural commodities, dairy products, and edible fats or oils, shall be in accordance with the Prompt Payment Act, as amended.

III. Interest Penalties

A. An interest penalty shall be paid automatically, if payment is not made by the due date and the conditions listed below are met, if applicable.

1. A proper invoice was received by the designated billing office.
2. A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with a term or condition.
3. In the case of a final invoice for any balance of funds due the contractor for supplies delivered or services performed, the amount was not subject to further settlement actions between the Government and the Contractor.

B. Determination of interest and penalties due will be made in accordance with the provisions of the Prompt Payment Act, as amended, the Contract Disputes Act, and regulations issued by the Office of Management and Budget.

IV. PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS, FAR 52.232-40 (November 2021)

(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 products or commercial services.

(End of Clause)

V. HHSAR 352.232-71 Electronic Submission of Payment Requests (February 2, 2022)

(a) Definitions. As used in this clause—

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), “Content of Invoices” and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Department of Treasury Invoice Processing Platform (IPP) or successor system. Information regarding IPP, including IPP Customer Support contact information, is available at www.ipp.gov or any successor site.

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

(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)

**TERMS AND CONDITIONS – SIMPLIFIED ACQUISITIONS (OTHER THAN
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

Update per FAC 2023-05

Last updated: 9/2023

**FAR 52.213-4 TERMS AND CONDITIONS – SIMPLIFIED ACQUISITIONS (OTHER
THAN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES) (SEP 2023).**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(ii) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(iii) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(iv) [52.204-27](#), Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328), unless the agency grants an exception - see paragraph (b) of 52.204-27.

(v) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).

(vi) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(vii) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).

(viii) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(ix) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) ([31 U.S.C. 3903](#) and [10 U.S.C. 3801](#)).

(x) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C.3553](#)).

(xi) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub.L.108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

(2) Listed below are additional clauses that apply:

(i) [52.232-1](#), Payments (APR 1984).

(ii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iii) [52.232-11](#), Extras (APR 1984).

(iv) [52.232-25](#), Prompt Payment (JAN 2017).

(v) [52.232-39](#), Unenforceability of Unauthorized Obligations (JUN 2013).

(vi) [52.233-1](#), Disputes (MAY 2014).

(vii) [52.244-6](#), Subcontracts for Commercial Products and Commercial Services (SEP 2023).

(viii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020)(Pub. L. 109-282) ([31 U.S.C. 6101 note](#)) (Applies to contracts valued at or above the threshold specified in FAR [4.1403](#)(a) on the date of award of this contract).

(ii) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (DEC 2022) (E.O. 13126) (Applies to contracts for supplies exceeding the micro-purchase threshold, as defined in FAR [2.101](#) on the date of award of this contract).

(iii) [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment., Contracts for Materials, Supplies, Articles, and Equipment (JUN 2020) ([41 U.S.C.chapter 65](#)) (Applies to supply contracts over the threshold specified in FAR 22.602 on the date of award of this contract, in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iv) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ([38 U.S.C. 4212](#)) (Applies to contracts valued at or above the threshold specified in FAR [22.1303](#)(a) on the date of award of this contract).

(v) [52.222-36](#), Equal Employment for Workers with Disabilities (JUN 2020) ([29 U.S.C. 793](#)) (Applies to contracts over the threshold specified in FAR [22.1408](#)(a) on the date of

award of this contract, unless the work is to be performed outside the United States by employees recruited outside the United States). (For purposes of this clause, "United States" includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(vi) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ([38 U.S.C. 4212](#)) (Applies to contracts valued at or above the threshold specified in FAR [22.1303\(a\)](#) on the date of award of this contract).

(vii) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ([41 U.S.C. chapter 67](#)) (Applies to service contracts over \$2,500 that are subject to the Service Contract Labor Standards statute and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer Continental Shelf).

(viii) (A) [52.222-50](#), Combating Trafficking in Persons (Nov 2021)([22 U.S.C. chapter 78](#) and E.O. 13627) (Applies to all solicitations and contracts).

(B) Alternate I (MAR 2015) (Applies if the Contracting Officer has filled in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), and contract performance location outside the United States to which the document applies).

(ix) [52.222-55](#), Minimum Wages Under Executive Order 13658 (Jan 2022) (Applies when [52.222-6](#) or [52.222-41](#) are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*))).

(x) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2022)) (E.O. 13706) (Applies when [52.222-6](#) or [52.222-41](#) are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia.))

(xi) [52.223-5](#), Pollution Prevention and Right-to-Know Information (MAY 2011) (E.O. 13423) (Applies to services performed on Federal facilities).

(xii) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693)(applies to contracts for products as prescribed at FAR [23.804\(a\)\(1\)](#)).

(xiii) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).

(xiv) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (MAY 2020) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP)) will be-

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance).

(xv) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons as a propellant or as a solvent; or contracts for maintenance or repair of electronic or mechanical devices).

(xvi) [52.223-21](#), Foams (JUN 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent; or contracts for construction of buildings or facilities).

(xvii) (A) [52.225-1](#), Buy American-Supplies (Oct 2022) ([41 U.S.C. chapter 67](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold, as defined in FAR [2.101](#) on the date of award of this contract, and the acquisition-

(1) Is set aside for small business concerns; or

(2) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$50,000).

(B) *Alternate I* (OCT 2022) (Applies if the Contracting Officer has filled in the domestic content threshold below, which will apply to the entire contract period of performance. Substitute the following sentence for the first sentence of paragraph (1)(ii)(A) of the definition of *domestic end product* in paragraph (a) of [52.225-1](#): (A) The cost of its components mined, produced, or manufactured in the United States exceeds __ percent of the cost of all its components. [*Contracting officer to insert the percentage per instructions at [13.302-5\(d\)\(4\)](#).*])

(xviii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations., Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) ([42 U.S.C. 1792](#))

(Applies to contracts greater than the threshold specified in FAR [26.404](#) on the date of award of this contract, that provide for the provision, the service, or the sale of food in the United States).

(xix) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT 2013)(Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) as its source of EFT information).

(xx) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (JUL 2013) (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information).

(xxi) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ([46 U.S.C. 55305](#)) (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504](#)(d)).

(2) Listed below are additional clauses that may apply:

(i) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (Nov 2021) (Applies to contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

(ii) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Nov 2021) (Applies to contracts over the threshold specified in FAR [9.405-2](#)(b) on the date of award of this contract).

(iii) [52.211-17](#), Delivery of Excess Quantities (Sept 1989) (Applies to fixed-price supplies).

(iv) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (Feb 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance.* The Contractor shall tender for acceptance only 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. The Government must exercise its post acceptance rights-

(1) Within a reasonable period of 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.

(e) *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.

(f) *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 that 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 that reasonably could have been avoided.

(g) *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.

(h) *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.

(End of clause).

52.203-17 Contractor Employee Whistleblower Rights.

As prescribed in [3.906](#) , insert the following clause:

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS (NOV 2023)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at [41 U.S.C. 4712](#) and Federal Acquisition Regulation (FAR) [3.900](#) through [3.905](#).

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](#), as described in FAR [3.900](#) through [3.905](#).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services.

As prescribed in 12.301(b)(3), insert the following clause:

Contract Terms and Conditions—*Commercial Products and Commercial Services* (Nov 2023)

(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 Federal *Acquisition Regulation* (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, *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 *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 as fixed by the Secretary until the amount is paid.

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

(vii) The interest charge made under this clause *may* be reduced under the procedures prescribed in FAR 32.608-2 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; 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) [Reserved]

(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 User 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)

Alternate I (Nov 2021). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

(a) *Inspection/Acceptance*. (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government *may* also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform *inspections* and tests in a manner that will not unduly delay the work.

(2) If the Government performs *inspection* or tests on the premises of the Contractor or a subcontractor, the Contractor *shall* furnish and *shall* require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as *may* be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government *may* require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction *shall* be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction *shall* be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below,

the portion of the "hourly rate" attributable to profit *shall* be 10 percent. The Contractor *shall* not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, *shall* disclose the corrective action taken. [Insert portion of labor rate attributable to profit.]

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government *may*-

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor *shall* be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government *may* at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to-

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as *may* be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property *shall* be governed by the clause pertaining to Government property.

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

(i) "Direct materials" means those materials that enter directly into the *end product*, or that are used or consumed directly in connection with the furnishing of the *end product* or service.

(ii) "Hourly rate" means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are-

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control.

(iii) "Materials" means-

(A) Direct materials, including *supplies* transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control;

(B) Subcontracts for *supplies* and incidental services for which there is not a labor category specified in the contract;

(C) Other *direct costs* (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; and

(E) *Indirect costs* specifically provided for in this clause.

(iv) "Subcontract" means any contract, as defined in FAR subpart 2.1, entered into with a subcontractor to furnish *supplies* or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or *affiliates* of a contractor or subcontractor. It includes, but is not limited to, *purchase orders*, and changes and modifications to *purchase orders*.

(i) *Payments*. (1) *Work performed*. The Government will pay the Contractor as follows upon the submission of commercial *invoices* approved by the *Contracting Officer*:

(i) *Hourly rate*.

(A) The amounts *shall* be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour *shall* be payable on a prorated basis.

(B) The rates *shall* be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the *Contracting Officer*.

(C) *Invoices* may be submitted once each month (or at more frequent intervals, if approved by the *Contracting Officer*) to the *Contracting Officer* or the authorized representative.

(D) When requested by the *Contracting Officer* or the authorized representative, the Contractor *shall* substantiate *invoices* (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule *shall* not be varied by virtue of the Contractor having performed work on an *overtime* basis.

(1) If no *overtime* rates are provided in the Schedule and the *Contracting Officer* approves *overtime* work in advance, *overtime* rates *shall* be negotiated.

(2) Failure to agree upon these *overtime* rates *shall* be treated as a dispute under the Disputes

clause of this contract.

(3) If the Schedule provides rates for *overtime*, the premium portion of those rates will be reimbursable only to the extent the *overtime* is approved by the *Contracting Officer*.

(ii) *Materials*.

(A) If the Contractor furnishes materials that meet the definition of a *commercial product* at FAR 2.101, the price to be paid for such materials *shall* not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor-

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or *invoice*; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or *invoice*.

(C) To the extent able, the Contractor *shall*-

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, *scrap*, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs*. Unless listed below, other direct and *indirect costs* will not be reimbursed.

(1) *Other Direct Costs*. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: *[Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."]*

(2) *Indirect Costs (Material Handling, Subcontract Administration, etc.)*. The Government will reimburse the Contractor for *indirect costs* on a pro-rata basis over the period of contract performance at the following fixed price: *[Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None')."]*

(2) *Total cost*. It is estimated that the total cost to the Government for the performance of this

contract *shall* not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor *shall* notify the *Contracting Officer* giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor *shall* so notify the *Contracting Officer*, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the *Contracting Officer* will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor *shall* not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the *Contracting Officer* notifies the Contractor *in writing* that the ceiling price has been increased and specifies in the notice a revised ceiling that *shall* constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase *shall* be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the *Contracting Officer* (or authorized representative) will have access to the following (access *shall* be limited to the listing below unless otherwise agreed to by the Contractor and the *Contracting Officer*):

(i) Records that verify that the employees whose time has been included in any *invoice* meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment-

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any *invoice* for the purpose of verifying that these employees have worked the hours shown on the *invoices*.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost-

(A) Any *invoices* or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those *invoices*.

(5) *Overpayments/Underpayments.* Each payment previously made *shall* be subject to reduction to

the extent of amounts, on preceding *invoices*, that are found by the *Contracting Officer* not to have been properly payable and *shall* also be subject to reduction for overpayments or to increase for underpayments. The Contractor *shall* promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate *invoice* payment or that the Government has otherwise overpaid on an *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 *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)(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, and then at the rate applicable for each six month period as established 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 in a timely manner;

(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 FAR 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 FAR [32.608-2](#) in effect on the date of this contract.

(viii) Upon receipt and approval of the *invoice* designated by the Contractor as the "completion *invoice*" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion *invoice*, and supporting documentation, *shall* be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the *Contracting Officer may approve in writing*) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, *shall* execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and *claims* arising out of or under this contract, subject only to the following exceptions.

(i) Specified *claims* in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) *Claims*, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice *in writing* to the *Contracting Officer* not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) *Claims* for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *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.

(9) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(10) *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 that appears on the payment check or the specified payment date if an *electronic funds transfer* payment is made.

(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 an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the *effective date of termination* by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that 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 that 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*.

Parent topic: [52.212 \[Reserved\]](#)

52.203-17 Contractor Employee Whistleblower Rights.

As prescribed in [3.906](#) , insert the following clause:

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS (NOV 2023)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at [41 U.S.C. 4712](#) and Federal Acquisition Regulation (FAR) [3.900](#) through [3.905](#).

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](#), as described in FAR [3.900](#) through [3.905](#).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts.

(End of clause)