

POSTING DATE: March 7, 2024

CLOSING DATE: March 17, 2024, at 11:30 a.m. EST

REFERENCE#: 24-019891

TO: NCI E-BIDBOARD

FROM: China Wright

NCI Purchasing Branch

china.wright@nih.gov

SUBJECT: NCI E-BIDBOARD POSTING – BD FACSymphony A5 Flow Cytometer’s Maintenance Bridge Agreement (04/01-07/01/2024)

This purchase is for a maintenance contract for the BD FACSymphony A5 Flow Cytometer, that is used daily in the NCI CCR Vaccine Branch flow cytometry core facility of building 41. Contractor shall provide all labor, material and equipment required to maintain and provide preventive maintenance for a government-owned Becton Dickinson BD FACSymphony A5 Flow Cytometer, Coherent G4 UV laser, Coherent Sapphire Green Laser, Coherent Sapphire Blue Laser, Coherent MPB Red Laser and Coherent OBIS Violet Laser for the period 01 April 2024 through 01 July 2024. All maintenance service shall be performed on-site in accordance with the manufacturer’s standard commercial maintenance practices.

The BD FACSymphony A5 flow cytometer Serial # H66096400111 allows the NCI to have a Core instrument with a configuration that is compatible to the customized instruments in the Vaccine Research Center. This instrument is capable of analyzing samples with 30 parameters. This instrument is in the NCI Vaccine Branch Flow Cytometry Core.

This contract will provide service and maintenance on this instrument following the initial warranty period. BD Biosciences is the only manufacturer of the FACSymphony A5 flow cytometer. There are currently six BD service engineers assigned to the NIH campus. They will respond to a service call within 24 hours and provide service to the instrument and all accessories. No other repair service has access to the proprietary parts that BD uses on its instruments, or the ability to respond to a service call within 24 hours. This instrument is used daily in the Vaccine Branch FACS Core facility to analyze samples from various animal vaccine studies. It cannot be out of service for any length of time. In order to keep this instrument fully functional a service contract with BD Biosciences is necessary.

Sole Source Justification:

BD Biosciences is the only manufacturer of the 4 FACSymphony A5 flow cytometer. There are currently six BD service engineers assigned to the NIH campus. They will respond to a service call within 24 hours and provide service to the instrument and all accessories. No other repair service has access to the proprietary parts that BD uses on its instruments, or the ability to respond to a service call within 24 hours. This instrument is used daily in the Vaccine Branch FACS Core facility to analyze samples from various animal vaccine studies. It cannot be out of service for any length of time. In order to keep this instrument fully functional a service contract with BD Biosciences is necessary.

Attached Documents: SF18 and Statement of Work

FAR Clause 52.213-4 Simplified Acquisitions Terms and Conditions (JULY 2021) is applicable and available in full text upon request.

REQUEST FOR QUOTATION (THIS IS NOT AN ORDER)				THIS RFQ <input type="checkbox"/> IS <input type="checkbox"/> IS NOT A SMALL BUSINESS SET-ASIDE		PAGE	OF	PAGES
1. REQUEST NO.	2. DATE ISSUED	3. REQUISITION/PURCHASE REQUEST NO.		4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1		RATING		
5a. ISSUED BY				6. DELIVER BY (Date)				
5b. FOR INFORMATION CALL (NO COLLECT CALLS)				7. DELIVERY				
NAME		TELEPHONE NUMBER		<input type="checkbox"/> FOB DESTINATION		<input type="checkbox"/> OTHER (See Schedule)		
		AREA CODE	NUMBER	9. DESTINATION				
8. TO:				a. NAME OF CONSIGNEE				
a. NAME		b. COMPANY		b. STREET ADDRESS				
c. STREET ADDRESS				c. CITY				
d.. CITY		e.. STATE	f.. ZIP CODE	d.. STATE	e. ZIP CODE			
10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE IN BLOCK 5a ON OR BEFORE CLOSE OF BUSINESS (Date)		IMPORTANT: This is a request for information, and quotations furnished are not offers. If you are unable to quote, please 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 services. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotations must be completed by the quoter.						

NOTE: Additional provisions and representations	are	are not attached.
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STATEMENT OF WORK (SOW)

1.0 TITLE

Maintenance Contract for BD FACSymphony A5 Flow Cytometer, Serial # H66096400111

2.0 BACKGROUND

In 2007, approval was given for the creation of a new NCI CCR Vaccine Branch flow cytometry core facility in Bldg 41. This facility was created to fulfill an unmet need on the NCI Bethesda campus for a Core facility with the BL2/BL3 containment necessary to safely sort live cells infected with retroviruses, such as HIV/SIV, and other infectious agents known or suspected in blood and tissue samples. Renovations on the space for the new flow cytometry core facility began in Fall 2007 and were completed in June, 2008. Katherine McKinnon was hired in January 2008 as the new Facility Head (Staff Scientist) to set up and run the new core facility. The facility became operational on July 1, 2008.

The Core supports multiple flow cytometry applications including: cell sorting (HIV, SIV), multi-color immunophenotyping, cell cycle analysis, proliferation analysis (Ki67, PCNA, BrdU, CFSE), apoptosis measurement (Annexin V, JC1, Active Caspase 3, TUNEL), intracellular cytokine analysis, stem cell analysis, calcium flux, bead array analysis of soluble proteins, phosphorylated protein analysis, fluorescent protein analysis and sorting, and quantitative flow cytometry.

The Core Facility provides instrument and software training, and technical expertise, including assay development and experimental design for all users. The Facility Manager provides sample preparation protocols and reagent recommendations for all users including fluochrome panel setups for each flow cytometer and reagent cross-reactivity among species. The Facility Manager provides assistance with data analysis and figure preparation for presentation of flow cytometry data in publications. The Facility Manager also maintains shared Microsoft Outlook calendars that are utilized by all users to schedule time on the instruments.

The Core currently has four flow cytometry analyzers, two flow cytometry cell sorters and one magnetic bead sorter (Miltenyi AutoMACS Pro). The four flow cytometry analyzers include 3 twenty-eight color, five laser BD Biosciences FACSymphony A5 analyzers and 1 Cytex Aurora Spectral analyzer. The cell sorters are 1 fifteen color, four laser BD Biosciences FACSaria III and 1 twelve-color, 4 Sony MA900 cell sorter.

The Core supports translational studies related to HIV, SIV and cancer, and basic areas of research such as HIV and HTLV-1 pathogenesis, mechanisms of translocations and alternative splicing in cancer, and functional outcomes of receptor-ligand interactions. The Core also provides research support for projects with an excellent track record in prophylactic and therapeutic vaccine design for HIV, and for other vaccine development projects on Hepatitis C, malaria, and HTLV; use of cytokines as adjuvants; ongoing research in the development of recombinant vectors and novel immunogens, such as adenoviral and HTLV-II based vectors for the delivery of HIV vaccines; and combination vaccine strategies.

STATEMENT OF WORK (SOW)

2.1 OBJECTIVE

This purchase is for a maintenance contract for the BD FACSymphony A5 Flow Cytometer, Serial # H66096400111 that is used daily in the core facility.

3.0 SCOPE

Contractor shall provide all labor, material and equipment required to maintain and provide preventive maintenance for a government-owned Becton Dickinson BD FACSymphony A5 Flow Cytometer, Serial # H66096400111, Coherent G4 UV laser, Coherent Sapphire Green Laser, Coherent Sapphire Blue Laser, Coherent MPB Red Laser and Coherent OBIS Violet Laser for the period 01 April 2024 through 01 July 2024. All maintenance service shall be performed on-site in accordance with the manufacturer's standard commercial maintenance practices.

4.0 CONTRACT REQUIREMENTS/ AND PERSONNEL QUALIFICATIONS

- 4.1 PREVENTIVE MAINTENANCE: Contractor shall perform one (1) preventive maintenance inspections (PMI) during the contract period. Technically qualified factory-trained personnel shall perform Service. Service shall consist of a thorough cleaning, calibration, adjusting, inspection, lubrication and testing of all equipment in accordance with the manufacturer's latest established service procedures. All equipment shall be operationally tested through at least one (1) complete operating cycle at the end of the preventive maintenance inspection to assure optimum and efficient performance.
- 4.2 EMERGENCY SERVICE: One on-site, emergency repair service visit shall be provided during the term of this contract at no additional cost to the government. Emergency service shall be provided during normal working hours, Monday through Friday excluding Federal Holidays. Upon receipt of notice that any part of the equipment is not functioning properly the Contractor shall within twenty-four (24) hours furnish a qualified factory-trained service representative to inspect the equipment and perform all repairs and adjustments necessary to restore the equipment to normal and efficient operating condition. Emergency service calls shall not replace the necessity for scheduled PMIs. The contractor shall provide unlimited technical support hot-line number for telephone trouble-shooting for the instrument, reagents and applications during normal working hours, except Federal holidays.
- 4.3 REPLACEMENT PARTS: The contractor shall furnish all required replacement parts at no additional cost to the Government, with the exception of consumables. Parts shall be new or re-manufactured to original equipment specifications.

STATEMENT OF WORK (SOW)

- 4.4 SOFTWARE UPDATES/SERVICE: The contractor shall provide Software Service and updates in accordance with the manufacturer's latest established service procedures, to include telephone access to technical support for use of program software and troubleshooting of the operating systems, at no additional cost to the Government. The contractor shall receive advance approval for the installation of all software updates and revisions from the Government. Defective software shall be replaced at no additional cost to the government.
- 4.5 PERSONNEL QUALIFICATIONS: Personnel shall have a minimum of three (3) years factory training and experience in the servicing of the Becton Dickinson FACSymphony, HTS, Coherent G4 UV laser, Coherent Sapphire Green Laser, Coherent Sapphire Blue Laser, Coherent MPB Red Laser and Coherent OBIS Violet Laser as covered by this contract. All primary service personnel shall have at least one backup support person with at least the same level of expertise on the equipment covered by this contract.
- 4.6 SERVICE EXCLUSIONS: The contractor shall not be responsible for any repairs necessitated by abuse, neglect, vandalism, Acts of God, fire or water. These repairs shall be the subject of a separate purchase order and shall not be performed under this contract.

5.0 TYPE OF ORDER

This is a firm fixed price purchase order.

6.0 PERIOD OF PERFORMANCE

Period of Performance shall be for three (3) months from 01 April 2024 through 01 July 2024.

7.0 PLACE OF PERFORMANCE

41 Medlars Drive, Room C310, Bethesda, MD 20892

8.0 REPORT(S)/DELIVERABLES AND DELIVERY SCHEDULE

N/A

9.0 PAYMENT

STATEMENT OF WORK (SOW)

Payment shall be made quarterly in arrears. 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 taken into account in the computation of any interest penalty owed the Contractor.
1. Vendor/Contractor: Name, Address, Point of Contact for the invoice (Name, title, telephone number, 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.
 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: Contract Number; 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. Data Universal Numbering System (DUNS) or DUNS + 4 as registered in the Central Contractor Registration (CCR).
 8. Federal Taxpayer Identification Number (TIN). In those exceptional cases where a contractor does not have a DUNS 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.*

STATEMENT OF WORK (SOW)

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.

- B. 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.
- C. Mail an original and 1 copy of the itemized invoice to:

National Institutes of Health
Office of Financial Management, Commercial Accounts
2115 East Jefferson Street, Room 4B-432, MSC 8500
Bethesda, MD 20892-8500

For inquiries regarding payment call: (301) 496-6088

In order to facilitate the prompt payment of invoices, it is recommended that the vendor submit a photocopy of the invoice to the "Consignee" designated for the acquisition in blocks 6A – 6E of the face page of the Order/Award document.

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:
 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.

STATEMENT OF WORK (SOW)

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 (DEC 2013)

- a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.
- b) The acceleration of payments under this clause does not provide any new rights under the prompt Payment Act.

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

52.213-4 Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (AUG 2020)

(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 (JUL 2018) (Section 1634 of Pub. L. 115-91).

(iii) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

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

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

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

(vii) [52.225-13](#), Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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

(ix) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub.L.108-77, 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) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (DEC 2013).

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

(viii) [52.244-6](#), Subcontracts for Commercial Items (AUG 2020).

(ix) [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 (JAN 2020) (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) [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 (JAN 2019) ([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 (DEC 2015) (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)).

(x) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (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 (DEC 2007) ([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) [52.225-1](#), Buy American-Supplies (MAY 2014) ([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-

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

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(xviii) [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 (FEB 2006) ([46 U.S.C.App.1241](#)) (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 (JUN 2016) (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 (JUN 2020) (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 postacceptance 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)

52.244-6 Subcontracts for Commercial Items.

As prescribed in [44.403](#) , insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2020)

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

Commercial item and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR) [2.101](#).

Subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (JUN 2020) ([41 U.S.C. 3509](#)), if the subcontract exceeds the threshold specified in FAR [3.1004](#)(a) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (JUN 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).

(v) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(vi) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) [52.219-8](#), Utilization of Small Business Concerns (OCT 2018) ([15 U.S.C.637](#)(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

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

(ix) [52.222-26](#), *Equal Opportunity* (Sept 2015) (E.O. 11246).

(x) [52.222-35](#), *Equal Opportunity for Veterans* (JUN 2020) ([38 U.S.C. 4212\(a\)](#));

(xi) [52.222-36](#), *Equal Opportunity for Workers with Disabilities* (JUN 2020) ([29 U.S.C. 793](#)).

(xii) [52.222-37](#), *Employment Reports on Veterans* (JUN 2020) ([38 U.S.C. 4212](#)).

(xiii) [52.222-40](#), *Notification of Employee Rights Under the National Labor Relations Act* (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xiv)

(A) [52.222-50](#), *Combating Trafficking in Persons* (JAN 2019) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(B) Alternate I (MAR 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(xv) [52.222-55](#), *Minimum Wages under Executive Order 13658* (DEC 2015), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).

(xvi) [52.222-62](#), *Paid Sick Leave Under Executive Order 13706* (JAN 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).

(xvii)

(A) [52.224-3](#), *Privacy Training* (JAN 2017) ([5 U.S.C. 552a](#)) if flow down is required in accordance with [52.224-3\(f\)](#).

(B) Alternate I (JAN 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3\(f\)](#) and the agency specifies that only its agency-provided training is acceptable).

(xviii) [52.225-26](#), *Contractors Performing Private Security Functions Outside the United States* (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

(xix) [52.232-40](#), *Providing Accelerated Payments to Small Business Subcontractors* (DEC 2013), if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).

(xx) [52.247-64](#), *Preference for Privately Owned U.S.-Flag Commercial Vessels* (FEB 2006) ([46 U.S.C. App. 1241](#) and [10 U.S.C. 2631](#)), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. Basic (Dec 2019)

Prescription

As prescribed in 4.2105(a), the contracting officer shall insert the provision at 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment—

(1) In all solicitations for contracts; and

(2) Under indefinite delivery contracts, in all notices of intent to place an order, or solicitations for an order (*e.g.* , subpart 8.4 and 16.505).

Full Text

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment

The Offeror shall not complete the representation in this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in the provision at 52.204-26, Covered Telecommunications Equipment or Services-Representation, or in paragraph (v) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items.

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

“Covered telecommunications equipment or services”, “critical technology”, and “substantial or essential component” have the meanings provided in clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications

Basic

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telecommunications equipment or services", the Offeror shall provide the following information as part of the offer—

- (1) A description of all covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);
- (2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;
- (3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and
- (4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

Subcontractor Flow Down Text

While the provision doesn't include an explicit flowdown requirement, it does require the offeror to certify that it will not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

Subcontractor Flow Down Recommendation

Prime's obligation;

Exceptions

Contracts X

Clause dependency

Related Clause

[52.222-19 Child Labor—Cooperation with Authorities and Remedies.](#)

[52.222-50 Combating Trafficking in Persons.](#)

[52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.](#)

[52.246-26 Reporting Nonconforming Items.](#)

[52.204-26 Covered Telecommunications Equipment or Services-Representation.](#)

[252.225-7975 Additional Access to Contractor and Subcontractor Records \(DEVIATION 2020-O0001\).](#)

[252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation.](#)

[252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation.](#)

[252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.](#)

[252.232-7015 Performance-Based Payments—Representation.](#)

[252.203-7003 Agency Office of the Inspector General.](#)

[252.203-7004 Display of Hotline Posters.](#)

[252.204-7000 Disclosure of Information.](#)

[252.204-7014 Limitations on the Use or Disclosure of Information by Litigation Support Contractors.](#)

[252.204-7015 Notice of Authorized Disclosure of Information for Litigation Support.](#)

[52.225-7050 Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.](#)

[52.228-7005 Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.](#)

[5252.209-9513 ORGANIZATIONAL CONFLICT OF INTEREST INSTRUCTIONS \(SERVICES\) \(NAVAIR\)](#)

[5252.204-9504 Disclosure of Contract Information \(NAVAIR\) \(Jan 2007\)](#)

[5252.227-9207 Limited Release of Contractor Confidential Business Information](#)

[3052.203-70 Instructions for Contractor Disclosure of Violations](#)

[3052.205-70 Advertisements, Publicizing Awards, and Releases.](#)

[552.203-71 Restriction on Advertising.](#)

[552.215-70 Examination of Records by GSA.](#)

[552.215-71 Examination of Records by GSA \(Multiple Award Schedule\).](#)

[552.215-72 Price Adjustment—Failure to Provide Accurate Information.](#)

[552.237-73 Restriction on Disclosure of Information.](#)

[552.238-83 Examination of Records by GSA \(Federal Supply Schedules\).](#)

[652.225-70 Arab League Boycott of Israel.](#)

[1452.203-70 Restrictions on Endorsements.](#)

[1452.215-71 Use and Disclosure of Proposal Information—Department of the Interior.](#)

[952.204-72 Disclosure of information.](#)

[952.204-75 Public affairs.](#)

[952.209-72 Organizational conflicts of interest.](#)

[952.223-75 Preservation of individual occupational radiation exposure records.](#)

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