

52.233-4

delivery schedule or contract price, or both.”

[50 FR 25681, June 20, 1985, as amended at 54 FR 29284, July 11, 1989; 60 FR 48231, 48276, Sept. 18, 1995; 61 FR 41472, Aug. 8, 1996]

52.233-4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

[69 FR 59701, Oct. 5, 2004]

52.234-1 Industrial Resources Developed Under Defense Production Act Title III.

As prescribed at 34.104, insert the following clause:

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994)

(a) *Definitions.*

Title III industrial resource means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

Title III project contractor means a Contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091-2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

48 CFR Ch. 1 (10-1-10 Edition)

(End of clause)

[59 FR 67048, Dec. 28, 1994; 60 FR 5870, Jan. 31, 1995]

52.234-2 Notice of Earned Value Management System—Pre-Award IBR.

As prescribed in 34.203(a) use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM—PRE-AWARD IBR (JUL 2006)

(a) The offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard - 748 (current version at time of solicitation).

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

(1) The plan shall—

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

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

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

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

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

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

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

(4) The offeror’s EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard - 748 guidelines.

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

(d) The Government will conduct an Integrated Baseline Review (IBR), as designated by the agency, prior to contract award. The objective of the IBR is for the Government

Federal Acquisition Regulation

52.234-4

and the Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of provision)

[71 FR 38246, July 5, 2006]

52.234-3 Notice of Earned Value Management System—Post Award IBR.

As prescribed in 34.203(b) use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM—POST AWARD IBR (JUL 2006)

(a) The offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard -748 (current version at time of solicitation).

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

(1) The plan shall—

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

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

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

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

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

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

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

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard -748 guidelines.

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

shall agree to subcontractors selected for application of the EVMS guidelines.

(End of provision)

[71 FR 38246, July 5, 2006]

52.234-4 Earned Value Management System.

As prescribed in 34.203(c), insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (JUL 2006)

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

(b) If, at the time of award, the Contractor's EVM System has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in ANSI/EIA Standard - 748 (current version at time of award), the Contractor shall—

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

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

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

(d) The Contracting Officer may require an IBR at—

(1) Exercise of significant options; or

(2) Incorporation of major modifications.

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

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform,