

## Federal Acquisition Regulation

## 52.250-5

(3) Offerors should read this notice carefully to make sure they comply with the terms of the notice if they plan on taking advantage of the SAFETY Act coverage for their technologies.

(d) All determinations by DHS are based on factors set forth in the SAFETY Act and its implementing regulations. A determination by DHS to issue a SAFETY Act designation, or not to issue a SAFETY Act designation for a particular Technology as a QATT is not a determination that the Technology meets, or fails to meet, the requirements of any solicitation issued by any Federal, State, local or tribal governments. Determinations by DHS with respect to whether to issue a SAFETY Act designation for Technologies submitted for DHS review are based on the factors identified in 6 CFR 25.4(b).

(e) Neither SAFETY Act designation nor certification is in any way a requirement of this action. Whether to seek the benefits of the SAFETY Act for a proposed product or service is entirely up to the offeror. Additional information about the SAFETY Act may be found at the SAFETY Act website at <http://www.SAFETYAct.gov>.

(f) Proposals in which pricing or any other terms or conditions are offered contingent upon SAFETY Act designation or certification of the proposed product(s) or service(s) will not be considered for award.

(End of provision)

*Alternate I* (FEB 2009). As prescribed in 50.206(c)(2), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals made contingent upon SAFETY Act designation before award. When an offer is made contingent upon SAFETY Act designation, the offeror also may submit an alternate offer without the contingency.

(2) If an offer is submitted contingent upon receipt of SAFETY Act designation prior to contract award, then the Government may not award a contract based on such offer unless the offeror demonstrates prior to award that DHS has issued a SAFETY Act designation for the offeror's technology.

(3) The Government reserves the right to award the contract based on a noncontingent offer, prior to DHS resolution of the offeror's application for SAFETY Act designation.

*Alternate II* (FEB 2009). As prescribed in 50.206(c)(3), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals presuming SAFETY Act designation before or after award.

(2) An offeror is eligible for award only if the offeror—

(i) Files a SAFETY Act designation application, limited to the scope of the applicable

prequalification designation notice, within 15 days after submission of the proposal;

(ii) Pursues its SAFETY Act designation application in good faith; and

(iii) Agrees to obtain the amount of insurance DHS requires for issuing the offeror's SAFETY Act designation.

(3) If DHS has not issued a SAFETY Act designation to the successful offeror before contract award, the contracting officer will include the clause at 52.250-5 in the resulting contract.

[72 FR 63037, Nov. 7, 2007, as amended at 74 FR 2739, Jan. 15, 2009]

### 52.250-5 SAFETY Act—Equitable Adjustment.

As prescribed in 50.206(d), insert the following clause:

SAFETY ACT—EQUITABLE ADJUSTMENT (FEB 2009)

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

*Act of terrorism* means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

*Block certification* means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved products for homeland security.

*Block designation* means SAFETY Act designation of a technology class that the DHS has determined to be a Qualified Anti-Terrorism Technology (QATT).

*Qualified Anti-Terrorism Technology (QATT)* means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services,

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software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

*SAFETY Act certification* means a determination by DHS pursuant to 6 U.S.C. 442(d), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller's specifications, and is safe for use as intended.

*SAFETY Act designation* means a determination by DHS pursuant to 6 U.S.C. 441(b) and 6 U.S.C. 443(a), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) Prices for the items covered by the pre-qualification designation notice, block designation, or block certification in the contract were established presuming DHS will issue a SAFETY Act designation (or SAFETY Act certification) for those items.

(c) In order to qualify for an equitable adjustment in accordance with paragraph (d) of this clause the Contractor shall in good faith pursue obtaining—

(1) SAFETY Act designation (or SAFETY Act certification); and

(2) The amount of insurance DHS requires for issuing any SAFETY Act designation (or SAFETY Act certification).

(d)(1) If DHS denies the Contractor's SAFETY Act designation (or certification) application, the Contractor may submit a request for an equitable adjustment within 30 days of DHS's notification of denial.

(2) The Contracting Officer shall either—

(i) Make an equitable adjustment to the contract price based on evidence of the resulting increase or decrease in the Contractor's costs and/or an equitable adjustment to other terms and conditions based on lack of SAFETY Act designation (or certification); or

(ii) At the sole option of the Government, terminate this contract for the convenience of the Government in place of an equitable adjustment.

(3) A failure of the parties to agree on the equitable adjustment will be considered to be a dispute in accordance with the "Disputes" clause of this contract.

(4) Unless first terminated, the Contractor shall continue contract performance during establishment of any equitable adjustment.

(End of clause)

[72 FR 63037, Nov. 7, 2007, as amended at 74 FR 2739, Jan. 15, 2009]

**52.251-1 Government Supply Sources.**

As prescribed in 51.107, insert the following clause in solicitations and con-

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tracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source:

**GOVERNMENT SUPPLY SOURCES (AUG 2010)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be *Government-furnished property*, as distinguished from *Government property*. The provisions of the clause entitled "Government Property," at 52.245-1, shall apply to all property acquired under such authorization.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 72 FR 27394, May 15, 2007; 75 FR 38683, July 2, 2010]

**52.251-2 Interagency Fleet Management System Vehicles and Related Services.**

As prescribed in 51.205, insert the following clause:

**INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)**

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 29284, July 11, 1989; 55 FR 52800, Dec. 21, 1990]

**52.252-1 Solicitation Provisions Incorporated by Reference.**

As prescribed in 52.107(a), insert the following provision:

**SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions 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. The