Department of Commerce

contain a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. The Contracting Officer will notify the contractor within 10 working days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.239–70 Software license addendum.

As prescribed in 48 CFR 1339.107, insert the following clause:

SOFTWARE LICENSE ADDENDUM (APR 2010)

(a) This Addendum incorporates certain terms and conditions relating to Federal procurement actions. The terms and conditions of this Addendum take precedence over the terms and conditions contained in any license agreement or other contract documents entered into between the parties.

(b) Governing Law: Federal procurement law and regulations, including the Contract Disputes Act, 41 U.S.C. Section 601 et. seq., and the Federal Acquisition Regulation (FAR), govern the agreement between the parties. Litigation arising out of this contract may be filed only in those fora that have jurisdiction over federal procurement matters.

(c) Attorney’s Fees: Attorney’s fees are payable by the Federal government in any action arising under this contract only pursuant to the Equal Access in Justice Act, 5 U.S.C. Section 504.

(d) No Indemnification: The Federal government will not be liable for any claim for indemnification; such payments may violate the Anti-Deficiency Act, 31 U.S.C. Section 1341(a).

(e) Assignment: Payments may only be assigned in accordance with the Assignment of Claims Act, 31 U.S.C. Section 3727, and FAR Subpart 32.2, “Assignment of Claims.”

(f) Invoices: Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. Section 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.239–71 Electronic and information technology.

As prescribed in 48 CFR 1339.270(a), insert the following provision:

ELECTRONIC AND INFORMATION TECHNOLOGY (APR 2010)

(a) To be considered eligible for award, offerors must propose electronic and information technology (EIT) that meet the applicable Access Board accessibility standards at 36 CFR 1194 designated below:

- 1194.21 Software applications and operating systems
- 1194.22 Web-based intranet and internet information and applications
- 1194.23 Telecommunications products
- 1194.24 Video and multimedia products
- 1194.25 Self-contained, closed products
- 1194.26 Desktop and portable computers
- 1194.31 Functional performance criteria
- 1194.41 Information, documentation and support

(b) The standards do not require the installation of specific accessibility-related software or the attachment of an assistive technology device, but merely require that the EIT be compatible with such software and devices so that it can be made accessible if so required by the agency in the future.

(c) Alternatively, offerors may propose products and services that provide equivalent facilitation. Such offers will be considered to have met the provisions of the Access Board standards for the feature or components providing equivalent facilitation. If none of the offers that meet all applicable provisions of the standards could be accepted without imposing an undue burden on the agency or component, or if none of the offerors propose products or services that fully meet all of the applicable Access Board’s provisions, those offerors whose products or services meet some of the applicable provisions will be considered eligible for award. Awards will not be made to an offeror meeting all or some of the applicable Access Board’s provisions if award would impose an undue burden upon the agency.
1352.239–72 Security requirements for information technology resources.

As prescribed in 48 CFR 1339.270(b), insert the following clause:

SECURITY REQUIREMENTS FOR INFORMATION TECHNOLOGY RESOURCES (APR 2010)

(a) Applicability. This clause is applicable to all contracts that require contractor electronic access to Department of Commerce sensitive non-national security or national security information contained in systems, or administrative control of systems by a contractor that process or store information that directly supports the mission of the Agency.

(b) Definitions. For purposes of this clause, the term “Sensitive” is defined by the guidance set forth in the Computer Security Act of 1987 (Pub. L. 100–235), including the following definition of the term:

(1) Sensitive information is “ * * * any information, the loss, misuse, or unauthorized access to, or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 522a of title 5, United States Code (The Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.”

(2) For purposes of this clause, the term “National Security” is defined by the guidance set forth in:

(i) The DOC IT Security Program Policy and Minimum Implementation Standards, Section 1.3.


(iii) Executive Order 12958, as amended, Classified National Security Information.

Classified or national security information is information that has been specifically authorized to be protected from unauthorized disclosure in the interest of national defense or foreign policy under an Executive Order or Act of Congress.

(3) Information technology resources include, but are not limited to, hardware, application software, system software, and information (data). Information technology services include, but are not limited to, the management, operation (including input, processing, transmission, and output), maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) The contractor shall be responsible for implementing sufficient Information Technology security, to reasonably prevent all compromise of DOC IT resources for all of the contractor’s systems that are interconnected with a DOC network or DOC systems that are operated by the contractor.

(d) All contractor personnel performing under this contract and contractor equipment used to process or store DOC data, or to connect to DOC networks, must comply with the requirements contained in the DOC Information Technology Management Handbook (see DOC, Office of the Chief Information Officer Web site), or equivalent/more specific agency or operating unit counsel guidance as specified immediately hereafter (Insert agency or operating unit counsel specific guidance, if applicable).

(e) Contractor personnel requiring a user account for access to systems operated by the contractor for DOC or interconnected to a DOC network to perform contract services shall be screened at an appropriate level in accordance with Commerce Acquisition Manual 1337.70, Security Processing Requirements for Service Contracts.

(f) Within 5 days after contract award, the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed initial IT security orientation training in DOC IT Security policies, procedures, computer ethics, and best practices, in accordance with DOC IT Security Program Policy, chapter 15, section 15.3. The COR will inform the contractor of any other available DOC training resources. Annually thereafter the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed annual refresher training as required by section 15.4 of the DOC IT Security Program Policy.

(g) Within 5 days of contract award, the contractor shall provide the COR with signed acknowledgement of the provisions as contained in Commerce Acquisition Regulation (CAR), 1352.209–72, Restrictions Against Disclosures.

(h) The contractor shall afford DOC, including the Office of Inspector General, access to the contractor’s and subcontractor’s facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of DOC data or to the function of computer systems operated on behalf of DOC, and to preserve evidence of computer crime.

(i) For all contractor-owned systems for which performance of the contract requires