shall be deemed a termination for convenience.

[60 FR 48254, Sept. 18, 1995]

EDITORIAL NOTE: For Federal Register citations affecting §52.212–4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

**CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS** (JULY 2014)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.212–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).


(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)


(5) [Reserved]


(12) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(13) [Reserved]


(ii) Alternate I (NOV 2011).

(iii) Alternate II (NOV 2011).


(iii) Alternate II (MAR 2004) of 52.219–7.

(16) 52.219–8, Utilization of Small Business Concerns (MAY 2014) (15 U.S.C. 637(d)(2) and (3).

(17)(i) 52.219–9, Small Business Subcontracting Plan (JUL 2013) (15 U.S.C. 637(d)(4)).

(ii) Alternate I (OCT 2001) of 52.219–9.

(iii) Alternate II (OCT 2001) of 52.219–9.

(18) 52.219–13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).

(19) 52.219–14, Limitations on Subcontracting (NOV 2011) (15 U.S.C. 637(a)(14)).


Federal Acquisition Regulation

52.212-5

(25) 52.219-28, Post Award Small Business Program Representation (JUL 2013) (15 U.S.C. 632(a)(2)).
(26) 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (JUL 2013) (15 U.S.C. 637(m)).
(27) 52.219-30, Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (JUL 2013) (15 U.S.C. 637(m)).
(29) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126).
(30) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
(31) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
(34) 52.222-37, Employment Reports on Veterans (July 2014) (38 U.S.C. 2121).
(35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
(36) 52.222-54, Employment Eligibility Verification (AUG 2013) (Executive Order 13469). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1893.)
(37)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6992(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
(38)(i) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6992(c)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
(39)(ii) Alternate I (JUN 2014) of 52.223-14.
(40) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 829(b)).
(41)(i) 52.223-16, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).
(41)(ii) Alternate I (Jun 2014) of 52.223-16.
(42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011).
(44)(ii) Alternate I (MAY 2014) of 52.225-3.
(44)(iii) Alternate II (MAY 2014) of 52.225-3.
(46) 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).
(48) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150).
(49) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).
(51) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (JUL 2013) (31 U.S.C. 3332).
(52) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (31 U.S.C. 3332).
(56)(ii) Alternate I (APR 2003) of 52.247-64.
(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

79


(7) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495).

(8) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792).

(9) 52.237-11, Accepting and Dispensing of $1 Coin (SEP 2008) (31 U.S.C. 5112(p)(1)).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—


(ii) 52.219-8, Utilization of Small Business Concerns (MAY 2014) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower-tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495). Flow down required in accordance with paragraph (i) of FAR clause 52.222-17.

(iv) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).


(viii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.


(x) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)). Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).


(xiii) 52.222-54, Employment Eligibility Verification (AUG 2013).


(xv) 52.225-6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
Federal Acquisition Regulation

(xvi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

(2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (JULY 2014). As prescribed in 12.301(b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to "paragraphs (a), (b), (c), or (d) of this clause" in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

Alternate II (July 2014). As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) Paragraph (d) of this clause. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) Those clauses listed in this paragraph (e)(1). Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203–13, Contractor Code of Business Ethics and Conduct (APR 2010) ((41 U.S.C. 5509)).


(C) 52.219–8, Utilization of Small Business Concerns (MAY 2014) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222–26, Equal Opportunity (MAR 2007) (E.O. 11246).


(G) 52.222–40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13096). Flow down required in accordance with paragraph (f) of FAR clause 52.222–40.


(I) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(a)(g)).


(L) 52.222–54, Employment Eligibility Verification (AUG 2013).

(M) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (MAY 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226–6.

(N) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

[60 FR 48255, Sept. 18, 1995]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting §52.212–5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

2. At 75 FR 34264, June 16, 2010, §52.212–5 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

52.213–1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) General. The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).