Contractor’s name may be removed from the list of those contractors with approved Assurances.

NOTE: The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which its research facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this program may be obtained by contacting the Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737 (E-mail: ace@aphis.usda.gov; Web site: (http://www.aphis.usda.gov/animal_welfare).

(End of clause)

352.270-6 Restriction on use of human subjects.

As prescribed in 370–304(b), the Contracting Officer shall insert the following clause:

RESTRICTION ON USE OF HUMAN SUBJECTS
(JANUARY 2006)

Pursuant to 45 CFR part 46, Protection of Human Research Subjects, the Contractor shall not expend funds under this award for research involving human subjects or engage in any human subjects research activity prior to the Contracting Officer’s receipt of a certification that the research has been reviewed and approved by the Institutional Review Board (IRB) designated under the Contractor’s Federal-wide assurance of compliance. This restriction applies to all collaborating sites, whether domestic or foreign, and subcontractors. The Contractor must ensure compliance by collaborators and subcontractors.

(End of clause)

352.270-7 Conference sponsorship request and conference materials disclaimer.

As prescribed in 370.602, the Contracting Officer shall insert the following clause:

CONFERENCE SPONSORSHIP REQUEST AND CONFERENCE MATERIALS DISCLAIMER
(JANUARY 2010)

(a) If HHS is not the sole provider of funding under this conference contract, then prior to the Contractor claiming HHS conference sponsorship, the Contractor shall submit a written request (including rationale) to the Contracting Officer for permission to claim such HHS sponsorship.

(b) Whether or not HHS is the conference sponsor, the Contractor shall include the following statement on conference materials, including promotional materials, agendas, and Web sites:

“This conference was funded, in whole or in part, through a contract (insert contract number) with the Department of Health and Human Services (HHS) (insert name of OPDIV/STAFFDIV). The views expressed in written conference materials and by speakers and moderators at this conference, do not necessarily reflect the official policies of HHS, nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.”

(c) Unless authorized by the Contracting Officer’s Technical Representative, the Contractor shall not display the HHS logo on any conference materials.

(End of clause)

352.270-8 Prostitution and related activities.

As prescribed in 370.701, the Contracting Officer shall insert the following clause:

PROSTITUTION AND RELATED ACTIVITIES
(JANUARY 2010)

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing and contribute to the phenomenon of trafficking in persons.

(b) Neither the Contractor nor any subcontractor(s) shall use Government funds provided under this contract to promote or advocate the legalization or practice of prostitution or sex trafficking. (NOTE: The term “contract” includes “order” wherever it appears in this clause.) The Contractor shall not construe anything in the preceding sentence to preclude providing individuals with palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(c) The Government does not require the Contractor to endorse or utilize a multisectoral approach to combating HIV/AIDS, or endorse, utilize, or participate in a prevention method or treatment program to which it has a religious or moral objection. Any information the Contractor provides about the use of condoms as part of projects or activities that are funded in connection with this contract shall be medically accurate and shall include the public health benefits and failure rates of such use.

(d) In addition, the Contractor shall have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any “exempt organizations”
(i.e., the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency), or any other organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking; and
(3) Contractor is physically and financially separate from the organization.

The following definitions apply for purposes of this clause:

(1) “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

(2) “Prostitution” means procuring or providing any commercial sex act.

(3) “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102(9)).

(4) “Specified types of commercial contracts” means contracts awarded for commercial items and services as defined in Federal Acquisition Regulation (FAR) 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding. Notwithstanding the preceding definition of “specified types of commercial contracts,” contracts for the purposes specified in paragraphs (e)(4)(i) through (iii) of this clause, that are awarded to implement HIV/AIDS programs, require that the Contractor have a policy explicitly opposing prostitution and sex trafficking—

(i) Supplies or services provided directly to the final populations receiving such supplies or services in host countries;

(ii) Technical assistance and training furnished directly to host country individuals or entities for the provision of supplies or services to the final populations receiving such supplies and services; or

(iii) The types of services listed in FAR 37.300(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in paragraphs (e)(4)(i) and (ii) of this clause, or making decisions or functioning in a recipient’s chain of command (e.g., providing managerial or supervisory services; approving financial transactions, personnel actions, etc.).

(f) The Contractor must have and maintain “objective integrity and independence” from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking. HHS will consider the Contractor to have objective integrity and independence from such an organization if the—

(1) Organization is a legally separate entity;

(2) Organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize activities inconsistent with a policy opposing prostitution and sex trafficking; and

(3) Contractor is physically and financially separate from the organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis, and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one factor below will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:

(i) The existence of separate personnel, management, and governance.

(ii) The existence of separate accounts, accounting records, and timekeeping records.

(iii) The degree of separation from facilities, equipment, and supplies used by the organization to conduct activities inconsistent with a policy opposing prostitution and sex trafficking, and the extent of such activities by the organization.

(iv) The extent to which—

(A) Signs and other forms of identification that distinguish the Contractor from the organization are present, and

(B) Signs and materials that could be associated with the organization or activities inconsistent with a policy opposing prostitution and sex trafficking are absent.

(v) The extent to which the U.S. Government, HHS, and the project name are protected from public association with an organization and its activities that are inconsistent with a policy opposing prostitution and sex trafficking in materials, such as publications, conferences, and press or public statements.

(g) The Contractor shall include, as express terms and conditions, the applicable provisions of this clause in all subcontract solicitations and subcontracts awarded under this contract. The Contractor agrees that HHS may, at any reasonable time, inspect the documents and materials the Contractor maintains or prepares in the usual course of its operations that relate to the Contractor’s compliance with this clause.

(h) As a prerequisite to award and payment of any Government funds under this contract, the Contractor shall provide the three following compliance certifications in a written statement addressed to the Contracting Officer:

(1) Organizational Integrity Certification: “I certify that (insert Contractor’s name), which will be the recipient of Government funds made available through this contract, has objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.”

(2) Subcontractor Compliance Certification: “I certify that (insert Contractor’s name) will include the Organizational Integrity certification in any subcontract awarded under this contract and will require such
subcontractor to provide the same certification that the Contractor provided.’’

(3) Acknowledgment Certification:

‘‘I certify that (insert Contractor’s name) acknowledges that these certifications are a prerequisite to receipt of Government funds in connection with this contract, and that any violation of these certifications by the Contractor or subcontractor(s) at any level shall be grounds for termination of the contract by HHS in accordance with the Federal Acquisition Regulation, Part 49, as well as any other remedies provided by law.’’

NOTE: In the case of existing contracts, the Contracting Officer shall add the certification requirements whenever the contract is modified to extend the period of performance or add funds, including any options that may be exercised. In so doing, the Contracting Officer shall delete in paragraph (h) the language ‘‘As a prerequisite to award and payment of any Government funds under this contract,’’ and replace it with: ‘‘As a prerequisite to continuation of this contract and payment of any Government funds under it.’’.

(i) A person(s) authorized to bind the Contractor and any subcontractor(s) shall execute the certifications. The Contractor shall provide its certifications to the Contracting Officer. A subcontractor(s) shall provide its certifications to the Contractor. The Contracting Officer may request that the Contractor provide any subcontractor certifications. In addition, the Contractor and any subcontractors shall provide renewed certifications for any modification that extends the contract period of performance or adds funds to the contract, including any options that may be exercised.

(j) This clause does not affect the applicability of the FAR clause at 52.222-50 entitled, ‘‘Combating Trafficking in Persons.’’

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21512, Apr. 26, 2010]

352.270-9 Non-discrimination for conscience.

As prescribed in 370.702, the Contracting Officer shall insert the following provision:

NON-DISCRIMINATION FOR CONSCIENCE

(JANUARY 2010)

(a) Section 301(d) of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act, as amended, provides that an organization, including a faith-based organization, that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961, under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, under the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, or under any amendment to the foregoing Acts for HIV/AIDS prevention, treatment, or care—

(1) Shall not be required, as a condition of receiving such assistance, to—

(i) Endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or

(ii) Endorse, utilize, make a referral to, become integrated with, or otherwise participate in a program or activity to which the organization has a religious or moral objection.

(2) Shall not be discriminated against under the provisions of law in subparagraph (a) for refusing to meet any requirement described in paragraph (a)(1) in this solicitation.

(b) Accordingly, an offeror who believes this solicitation contains work requirements that would require it to endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS, or to endorse, utilize, make referral to, become integrated with, or otherwise participate in a program or activity to which it has a religious or moral objection, shall identify those work requirements it has excluded in its technical proposal.

(c) The Government acknowledges that an offeror has specific rights, as cited in paragraph (b) of this provision, to exclude certain work requirements in this solicitation from its proposal. However, the Government reserves the right to not make an award to an offeror whose proposal does not comply with the salient work requirements of the solicitation. Any exercise of that Government right will be made by the Head of the Contracting Activity.

(End of provision)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21512, Apr. 26, 2010]

PART 353—FORMS

Subpart 353.3—Illustrations of Forms

Sec. 353.370-674 Form HHS 674, Structured Approach Profit-Fee Objective.


SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.