

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 121(c)

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 452.2—Texts of Provisions and Clauses

452.204-70 Inquiries.

As prescribed in 404.7001, insert the following provision:

INQUIRIES (FEB 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of provision)

452.211-70 Brand Name or Equal.

As prescribed in 411.171, insert the following provision:

BRAND NAME OR EQUAL (NOV 1996)

(As used in this provision, the term “brand name” includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Offers of “equal” products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer (see clause 452.211-71) and are determined by the Contracting Officer to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an “equal” product, the offeror shall be considered as offering the brand name product(s) referenced in the solicitation.

(c)(1) If the offeror proposes to furnish an “equal” product or products, the brand

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name(s), if any, and any other required information about the product(s) to be furnished shall be inserted in the space provided in the solicitation. The evaluation of offers and the determination as to the equality of the product(s) offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting activity. Caution to offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the offer and is not reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If an offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offer shall include (i) a clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(End of provision)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998, as amended at 70 FR 50, Jan. 3, 2005]

452.211-71 Equal Products Offered.

As prescribed in 411.171, insert the following or substantially the same clause in solicitations seeking offers on a "brand name or equal" basis to allow offerors the opportunity to clearly identify the "equal" item being offered, and to illustrate how that item meets the salient characteristics requirements of the Government.

EQUAL PRODUCTS OFFERED (NOV 1996)

(a) Offerors proposing to furnish an "equal" product, in accordance with the "Brand Name or Equal" provision of this solicitation, shall provide the following information for each offered "equal" product:
Contract Line Item Number (if any): _____
Brand Name or Equal Product identified by the Government in this solicitation: _____

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Offered Product Name: _____
Catalog Description or part number: _____

Manufacturer's Name: _____
Manufacturer's Address: _____

(b) Offerors are responsible for submitting all additional information on the above product necessary for the Contracting Officer to determine whether the product offered meets the "brand name or equal" product's salient characteristics listed in the solicitation.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211-72 Statement of Work/Specifications.

As prescribed in 411.171, insert the following clause:

STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications referenced in Section J.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211-73 Attachments to Statement of Work/Specifications.

As prescribed in 411.171, insert the following clause:

ATTACHMENTS TO STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The attachments to the Statement of Work/Specifications listed in Section J are hereby made part of this solicitation and any resultant contract.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211-74 Period of Performance.

As prescribed in 411.404(a), insert the following clause:

PERIOD OF PERFORMANCE (FEB 1988)

The period of performance of this contract is from _____ through _____.*

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(End of clause)

** Contracting Officer shall insert the appropriate dates.*

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.211-75 Effective Period of the Contract.

As prescribed in 411.404(b), insert the following clause:

EFFECTIVE PERIOD OF THE CONTRACT (FEB 1988)

The effective period of this contract is from ____ through ____.*

(End of clause)

** Contracting Officer shall insert the appropriate dates.*

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998.]

452.214-70 Award by Lot.

As prescribed in 414.201-6, insert a provision substantially as follows:

AWARD BY LOT (NOV 1996)

Subject to the Section L provision FAR 52.214-10, "Contract Award—Sealed Bidding," award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by item within any lot when the contracting officer determines that it is advantageous to the Government.

(End of provision)

452.215-71 Instructions for the Preparation of Technical and Business Proposals.

As prescribed in 415.209(a), insert a provision substantially as follows:

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND BUSINESS PROPOSALS (SEP 1999)

(a) *General Instructions.* Proposals submitted in response to this solicitation shall be furnished in the following format with the numbers of copies as specified below.

(1) The proposal must include a technical proposal and business proposal. Each of the parts shall be separate and complete so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal

so that the contractor's understanding of the statement of work may be evaluated.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any "alternate" proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(4) Offerors shall submit their proposal(s) in the following format and the quantities specified:

(a) ____* copies of the completed, signed offer (Sections A through K of the solicitation package)

(b) ____* copies of the technical proposal

(c) ____* copies of the business/cost proposal

(b) *Technical Proposal Instructions.* The technical proposal will be used to make an evaluation and arrive at a determination as to whether the proposal will meet the requirements of the Government. Therefore, the technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed, description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work. Proposals which merely paraphrase the requirements of the Government's specifications/ statement of work, or use such phrases as "will comply" or "standard techniques will be employed" will be considered unacceptable and will not be considered further. As a minimum, the proposal must clearly provide the following:

(Contracting Officer shall identify in this section the minimum information required to evaluate each technical evaluation factor listed in Section M.)

(c) *Business Proposal Instructions.*

(1) Cost Proposal.

In addition to any other requirements for cost/pricing information required in clause FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 1997), the following is required:

(Contracting Officer shall identify additional information required if appropriate.)

(2) Business Proposal.

(a) Furnish financial statements for the last two years, including an interim statement for the current year, unless previously provided to the office issuing the RFP, in which case a statement as to when and where this information was provided may be furnished instead.

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(b) Specify the financial capacity, working capital and other resources available to perform the contract without assistance from any outside source.

(c) Provide the name, location, and inter-company pricing policy for other divisions, subsidiaries, parent company, or affiliated companies that will perform work or furnish materials under this contract.

(End of provision)

**Contracting officer shall insert number of copies required.*

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999; 70 FR 50, Jan. 3, 2005]

452.215-72 Amendments to Proposals.

As prescribed in 415.209(b), insert the following provision:

AMENDMENTS TO PROPOSALS (FEB 1988)

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment on the lower right corner of the changed pages.

(End of provision)

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

452.215-73 Post Award Conference.

As prescribed in 415.570, insert a clause substantially as follows:

POST AWARD CONFERENCE (NOV 1996)

A post award conference with the successful offeror is required. It will be scheduled within ____* days after the date of contract award. The conference will be held at: ____*.

(End of clause)

**Contracting officer to insert number of days and location.*

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52675, Sept. 30, 1999]

452.216-70 Award Fee.

As prescribed in 416.405, insert a clause substantially as follows:

AWARD FEE (FEB 1988)

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with

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the award fee plan. The Government will determine the amount of award fee every ____* months beginning with ____*. The Fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not subject to the "Disputes" clause. The Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

(End of clause)

**Contracting Officer shall insert appropriate number of months.*

***Contracting Officer shall insert appropriate date.*

452.216-71 Base Fee and Award Fee Proposal.

As prescribed in 416.470, insert the following provision:

BASE FEE AND AWARD PROPOSAL (FEB 1988)

For the purpose of this solicitation, offerors shall propose a base fee of ____* percent of the total estimated cost proposed. The award fee shall not exceed ____* percent of the total estimated cost.

(End of provision)

**Contracting Officer shall insert appropriate percentages.*

452.216-72 Evaluation Quantities—Indefinite-Delivery Contract.

As prescribed in 416.506(a), insert a provision substantially as follows:

EVALUATION QUANTITIES—INDEFINITE-DELIVERY CONTRACT (FEB 1988)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

(End of provision)

452.216-73 Minimum and Maximum Contract Amounts.

As prescribed in 416.506(b), insert the following clause:

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MINIMUM AND MAXIMUM CONTRACT AMOUNTS (FEB 1988)

During the period specified in FAR clause 52.216-18, ORDERING, the Government shall place orders totaling a minimum of _____*, but not in excess of _____*.

(End of clause)

**Contracting Officer shall insert appropriate quantity or dollar amounts.*

452.216-74 Ceiling Price.

As prescribed in 416.670, insert the following clause:

CEILING PRICE (FEB 1988)

The ceiling price of this contract is \$_____. The Contractor shall not make expenditures or incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

(End of clause)

**Contracting Officer shall insert appropriate dollar amount.*

452.216-75 Letter Contract.

As prescribed in 416.603-4, insert the following clause:

LETTER CONTRACT (FEB 1988)

This contract replaces letter contract No. _____* dated _____* and all amendments thereto.

(End of clause)

**Contracting Officer shall insert number and date.*

452.219-70 Size Standard and NAICS Code Information.

As prescribed in 419.508, insert the following provision:

SIZE STANDARD AND NAICS CODE INFORMATION (SEP 2001)

The North American Industrial Classification System Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed below:

Contract line item(s): _____* NAICS Code _____* Size Standard _____*

(End of provision)

**Contracting Officer shall insert the appropriate data for each contract line item in the solicitation. The data entry line*

may be duplicated as required to describe all of the contract line items or sub-items.

[61 FR 53646, Oct. 15, 1996, as amended at 66 FR 49317, Sept. 27, 2001]

452.224-70 Confidentiality of Information.

As prescribed in 424.104, insert a clause substantially as follows:

CONFIDENTIALITY OF INFORMATION (FEB 1988)

(a) Confidential information, as used in this clause, means—

(1) information or data of a personal nature, proprietary about an individual, or (2) information or data submitted by or pertaining to an organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of primarily invalidated findings could create an erroneous conclusion which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the "Disputes" clause.

(d) If it is established that information to be utilized under this contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45 day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and Contracting Officer will be settled pursuant to the "Disputes" clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of clause)

452.226-70—452.226-72 [Reserved]

452.228-70 Alternative Forms of Security.

As prescribed in 428.204-2, insert the following provision:

ALTERNATIVE FORMS OF SECURITY (NOV 1996)

If furnished as security, money orders, drafts, cashiers checks, or certified checks shall be drawn payable to: ____*.

(End of provision)

**Contracting Officer shall insert the name of the USDA contracting activity.*

452.228-71 Insurance Coverage.

As prescribed in 428.310, insert the following clause:

INSURANCE COVERAGE (NOV 1996)

Pursuant to FAR clause 52.228-5, Insurance-Work on a Government Installation, the Contractor will be required to present evidence to show, as a minimum, the amounts of insurance coverage indicated below:

(a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.

(b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on a comprehensive form of policy of at least \$500,000 per occurrence.

(c) Automobile Liability. The Contractor shall have automobile liability insurance written on a comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger injury. Coverage for passenger injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

Alternate I (NOV 1996). As prescribed in 428.310, substitute the following paragraph (b), when additionally the contractor must have property damage liability coverage:

(b) General Liability. (1) The Contractor shall have bodily injury liability coverage written on a comprehensive form of policy of at least \$500,000 per occurrence.

(2) The Contractor shall have property damage liability insurance shall be required in the amount of ____* per occurrence.

**Contracting Officer shall insert amount required.*

452.232-70 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.

As prescribed in 432.111, insert the following clause:

REIMBURSEMENT FOR BOND PREMIUMS—FIXED-PRICE CONSTRUCTION CONTRACTS (NOV 1996)

The Contract Price includes the total amount for premiums that the Contractor attributes to the furnishing of performance and payment bonds required by the contract. Reimbursement for bond premiums under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction, shall not cover any amount therefor not included in the contract price.

(End of clause)

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26996, May 15, 1998, as amended at 70 FR 50, Jan. 3, 2005]

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452.236-70 Additive or Deductive Items.

As prescribed in 436.205, insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (FEB 1988)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award therein can be made within such funds. For example, when the amount available is \$100,000 and a bidder's base bid and four successive additives are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because of each of them would cause the aggregate bid to exceed \$100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected first or base bid item and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of clause)

452.236-71 Prohibition Against the Use of Lead-Based Paint.

As prescribed in 436.571, insert the following clause:

PROHIBITION AGAINST THE USE OF LEAD-BASED PAINT (NOV 1996)

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more than 0.06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(End of clause)

452.236-72 Use of Premises.

As prescribed in 436.572, insert the following clause:

USE OF PREMISES (NOV 1996)

(a) Before any camp, quarry, borrow pit, storage, detour, or bypass site, other than shown on the drawings, is opened or operated on USDA land or lands administered by the USDA, the Contractor shall obtain written permission from the Contracting Officer. A camp is interpreted to include a campsite or trailer parking area of any employee working on the project for the Contractor.

(b) Unless excepted elsewhere in the contract, the Contractor shall (i) provide and maintain sanitation facilities for the work force at the site and (ii) dispose of solid waste in accordance with applicable Federal, State and local regulations.

(End of clause)

452.236-73 Archaeological or Historic Sites.

As prescribed in 436.573, insert the following clause:

ARCHAEOLOGICAL OR HISTORIC SITES (FEB 1988)

If a previously unidentified archaeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

(End of clause)

452.236-74 Control of Erosion, Sedimentation, and Pollution.

As prescribed in 436.574, insert the following clause:

CONTROL OF EROSION, SEDIMENTATION, AND POLLUTION (NOV 1996)

(a) Operations shall be scheduled and conducted to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or nearby rivers, streams, or impoundments; or into natural or man-made channels. Wash water or waste from concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.

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(c) Mechanized equipment shall not be operated in flowing streams without written approval by the Contracting Officer.

(End of clause)

452.236-75 Maximum Workweek—Construction Schedule.

As prescribed in 436.575, insert the following clause:

MAXIMUM WORKWEEK—CONSTRUCTION SCHEDULE (NOV 1996)

Within ____ calendar days after receipt of a written request from the Contracting Officer, the Contractor must submit the following in writing for approval:

(a) A schedule as required by FAR clause 52.236-15, Schedules for Construction Contracts, and

(b) The hours (including the daily starting and stopping times) and days of the week the Contractor proposes to carry out the work.

The maximum workweek that will be approved is ____*.

(End of clause)

**Contracting Officer shall insert appropriate number of days and hours and/or days.*

452.236-76 Samples and Certificates.

As prescribed in 436.576, insert the following clause:

SAMPLES AND CERTIFICATES (FEB 1988)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance with materials and construction specified in the contract performance requirements.

Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

452.236-77 Emergency Response.

As prescribed in 436.577, the following clause may be used in Forest Service construction contracts:

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EMERGENCY RESPONSE (NOV 1996)

(a) *Contractor's Responsibility for Fire Fighting.* (1) The Contractor, under the provisions of FAR clause 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work.

(2) The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees.

(b) *Contractor's Responsibility for Notification in Case of Fire.* The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(c) *Contractor's Responsibility for Responding to Emergencies.* When directed by the Contracting Officer, the Contractor shall allow the Government to temporarily use employees and equipment from the work site for emergency work (anticipated to be restricted to fire fighting). An equitable adjustment for the temporary use of employees and equipment will be made under the Changes clause, FAR 52.243-4.

(End of clause)

452.236-78 Fire Suppression and Liability.

As prescribed in section 436.578, the following clause shall be inserted in Integrated Resource Service Contracts (IRSC) awarded for the Forest Service.

FIRE SUPPRESSION AND LIABILITY CLAUSE

(a) *Contractor's Responsibility for Fire Fighting.* The Contractor, under the provisions of FAR clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees subject to the following fire classifications listed in subsection (b).

(b) *Fire Suppression Costs.* The Contractor's obligations for cost of fire suppression vary according to three classifications of fires as follows:

(1) *Operations Fire.* An "operations fire" is a fire caused by the Contractor's operations other than a negligent fire. The Contractor agrees to reimburse Forest Service for such cost for each operations fire, subject to a

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maximum dollar amount of [Contracting Officer insert amount]. The cost of the Contractor's actions, supplies, and equipment on any such fire, or otherwise provided at the request of Forest Service, shall be credited toward such maximum. If the Contractor's actual cost exceeds contractor's obligation stated above, Forest Service shall reimburse the contractor for the excess.

(2) *Negligent Fire*. A "negligent fire" is a fire caused by the negligence or fault of the Contractor's operations including, but not limited to, one caused by smoking by persons engaged in the Contractor's operations during the course of their employment, or during rest or lunch periods; or if the Contractor's failure to comply with requirements under this contract results in a fire starting, or permits a fire to spread. Damages and the cost of suppressing negligent fires shall be borne by the Contractor.

(3) *Other Fires on Contract Area*. Forest Service shall pay the Contractor, at firefighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Contractor at the request of Forest Service, on any fire on contract area other than an operations fire or a negligent fire.

(c) *Contractor's Responsibility for Notification in Case of Fire*. The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(d) *Contractor's Responsibility for Responding to Emergencies*. When directed by the Contracting Officer, the Contractor shall temporarily redirect employees and equipment from the work site for emergency work (anticipated to be restricted to firefighting). This is considered to be within the general scope of the contract. An equitable adjustment for any such redirection of employees and equipment will be made under the FAR clause at 52.243-4, Changes.

(e) *Performance by the Contractor*. Where the Contractor's employees, agents, contractors, subcontractors, or their employees or agents perform the Contractor's operations in connection with fire responsibilities, the Contractor's obligations shall be the same as if performance was by Contractor.

(f) *State Law*. The Contractor shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recovered in an action based on State law, except for such costs resulting from operations fires. Amounts due to the Contractor for firefighting expenditures on operations fires shall not be withheld pending settlement of any such claim or action based on State law.

(End of Clause)

[81 FR 7480, Feb. 12, 2016]

452.236-79 Opted Timber Sale Road Requirements.

As prescribed in 436.579, insert the following clause:

OPTED TIMBER SALE ROAD REQUIREMENTS (NOV 1996)

This contract is for the construction of timber sale road(s) which a timber purchaser has opted to have the Government construct. The Government is obligated to make these roads available to the timber purchaser by ____*. Failure to make these roads available by this date could result in Government liability for delay to the timber purchaser for which the Contractor might become liable should the Contractor fail to complete this contract within the specified and allowed contract time.

(End of clause)

*Contracting Officer shall insert appropriate date.

452.236-80 Firms Ineligible for Award—Construction.

As prescribed in 436.670, insert the following clause:

FIRMS INELIGIBLE FOR AWARD—CONSTRUCTION (NOV 1996)

The firm(s) and its subsidiaries or affiliates signatory to this contract shall be ineligible for award of any construction contract resulting from the design work performed under this contract.

(End of clause)

452.237-70 Loss, Damage, Destruction or Repair.

(a) As prescribed in 437.110(a), insert a clause substantially as follows:

LOSS, DAMAGE, DESTRUCTION OR REPAIR (FEB 1988)

(a) For equipment furnished under this contract without operator, the Government will assume liability for any loss, damage or destruction of such equipment, not to exceed a total of \$ ____* except that no reimbursement will be made for loss, damage or destruction due to (1) ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.

(b) For equipment furnished under this contract with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government

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employee(s) while acting within the scope of their employment.

(c) All repairs to equipment furnished under this contract shall be made by the Contractor and reimbursement, if any, shall be determined in accordance with (a) or (b) above. Repairs shall be made promptly and equipment returned to use within ____** hours. In lieu of repairing equipment, the Contractor may furnish similar replacement equipment within the time specified. The Contractor may authorize the Government to make repairs upon the request of the Contracting Officer. In such case, the Contractor will be billed for labor and parts costs.

(End of clause)

**Contracting Officer shall insert amount available in current funds to cover potential liability.*

***Contracting Officer shall insert appropriate number of hours.*

452.237-71 Pre-Bid/Pre-Proposal Conference.

As prescribed in 437.110(b), insert a provision substantially as follows:

PRE-BID/PRE-PROPOSAL CONFERENCE (FEB 1988)

(a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

(e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(f) The conference will be held:

Date: _____

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Time: _____
Location: _____

(End of clause)

452.237-73 Equipment Inspection Visit.

As prescribed in 437.110(c), insert the following provision:

EQUIPMENT INSPECTION VISIT (FEB 1988)

Offerors are urged and expected to inspect the equipment on which maintenance or repairs are to be performed and to satisfy themselves regarding all conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the equipment constitute grounds for a claim after contract award.

Offerors are invited to inspect the ____* at ____* by telephoning ____* on ____* for an appointment.

(End of clause)

**Contracting Officer shall insert appropriate data.*

452.237-74 Key Personnel.

As prescribed in 437.110(d), insert a clause substantially as follows:

KEY PERSONNEL (FEB 1988)

(a) The Contractor shall assign to this contract the following key personnel: _____

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide 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. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

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(End of clause)

452.237-75 Restrictions Against Disclosure.

As prescribed in 437.110(e), insert a clause substantially as follows:

RESTRICTIONS AGAINST DISCLOSURE (FEB 1988)

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part in any manner or form, or to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, *i.e.*, on a "need to know" basis. The Contractor agrees to immediately notify in writing, the Contracting Officer, named herein, in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

452.237-76 Progress Reporting.

As prescribed in 437.270(a), insert a clause substantially as follows:

PROGRESS REPORTING (FEB 1988)

The Contractor shall submit a progress report _____*, covering work accomplished during that period of the contract performance. The progress report shall be brief and factual and shall be prepared in accordance with the following format:

- (a) A cover page containing:
 - (1) Contract number and title;
 - (2) Type of report, sequence number of report, and period of performance being reported;
 - (3) Contractor's name and address;
 - (4) Author(s); and
 - (5) Date of report.

(b) Section I—An introduction covering the purpose and scope of the contract effort. This shall be limited to one paragraph in all but the first and final month's narrative.

(c) Section II—A description of overall progress plus a separate description of each task or other logical segment of work on

which effort was expended during the report period. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved.

(d) Section III—A description of current technical or substantive performance, and any problem(s) which may impede performance along with proposed corrective action.

(e) Section IV—A planning schedule shall be included with the first progress report for all assigned tasks required under the contract, along with the estimated starting and completion dates for each task. The planning schedule shall be updated and submitted with each subsequent technical progress report, including an explanation of any difference between actual progress and planned progress, why the differences have occurred, and—if behind planned progress—what corrective steps are planned.

(f) Section V—If applicable, financial information shall be submitted for each major task or line item cost.

Data shall include:

- (1) The total estimated cost budgeted (fee excluded).
- (2) The estimated cost expended during the current reporting period.
- (3) Identification of direct labor hours of prime contractor and subcontractor(s) and/or consultant(s), if applicable.
- (4) Total project to-date expenditures.
- (5) Total remaining funds.

(End of clause)

**Contracting Officer shall insert frequency of reporting requirement.*

452.237-78 Contracts with Consulting Firms for Services.

As prescribed in 437.270(b), insert a clause substantially as follows:

CONTRACTS WITH CONSULTING FIRMS FOR SERVICES (FEB 1988)

Offerors are specifically cautioned that any firm(s) receiving a contract award to provide the services described herein will be prohibited from competing for or receiving a follow-on contract to perform ____.*

(End of clause)

**Contracting Officer shall insert the appropriate information.*

452.246-70 Inspection and Acceptance.

As prescribed in 446.370, insert the following clause:

INSPECTION AND ACCEPTANCE (FEB 1988)

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies

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and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at: ____.*

(End of clause)

** Contracting Officer shall insert appropriate identifying data.*

Alternate 1 (FEB 1988). As prescribed in 446.370, substitute a paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at: ____.*

(c) Acceptance will be performed at: ____.*

(End of clause)

452.247-70 Delivery Location.

As prescribed in 447.302, insert a clause substantially as follows:

DELIVERY LOCATION (FEB 1988)

Shipment of deliverable items, other than reports, shall be to: ____.*

(End of clause)

** Contracting Officer shall insert appropriate identifying data.*

452.247-71 Marking Deliverables.

As prescribed in 447.305-10(a), insert a clause substantially as follows:

MARKING DELIVERABLES (FEB 1988)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: ____.*

(End of clause)

** Contracting Officer shall insert the appropriate information.*

452.247-72 Packing for Domestic Shipment.

As prescribed in 447.305-10(b), insert the following clause:

PACKING FOR DOMESTIC SHIPMENT (FEB 1988)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with the Interstate Commerce Commission regulations, Uniform Freight Classification Rules, or regulations of other carriers as applicable to the mode of transportation.

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(End of clause)

452.247-73 Packing for Overseas Shipment.

As prescribed in 447.305-10(c), insert the following clause:

PACKING FOR OVERSEAS SHIPMENT (FEB 1988)

Supplies shall be packed for overseas shipment in accordance with the best commercial export practice suitable for water movement to arrive undamaged at ultimate destination.

(End of clause)

PART 453—FORMS

Sec.

453.000 Scope of part.

Subpart 453.1—General

453.103 Exceptions.

453.108 Recommendations concerning forms.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.

453.213 Simplified Acquisition and other simplified purchase procedures (AD-838).

453.270 Request for contract action (AD-700).

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.

453.303 Agency forms.

453.303-700 Procurement Request (AD-700).

453.303-838 Purchase Order (AD-838).

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

453.000 Scope of part.

This part:

(a) Prescribes USDA (AD) forms for use in acquisition,

(b) Contains requirements and information generally applicable to AD forms and forms prescribed by FAR part 53, and

(c) Illustrates AD forms.

Subpart 453.1—General

453.103 Exceptions.

(a) The contracting officer shall submit a request for exceptions to forms prescribed in FAR part 53 through the head of the contracting activity (HCA)