



October 1, 2019

MEMORANDUM FOR ROBERT NOONAN  
ASSISTANT COMMISSIONER  
OFFICE OF GENERAL SUPPLIES AND SERVICES (QS)

CC: LAURA J. STANTON  
DEPUTY ASSISTANT COMMISSIONER FOR  
CATEGORY MANAGEMENT  
OFFICE OF INFORMATION TECHNOLOGY CATEGORY (QT3)

FROM: JEFFREY A. KOSES JEFFREY KOSES Digitally signed by JEFFREY KOSES  
Date: 2019.10.01 15:50:55 -0400  
SENIOR PROCUREMENT EXECUTIVE  
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: FAR and GSAR Class Deviation—e-Marketplace Provider  
Acquisition for the Commercial e-Commerce Portals

## 1. Purpose.

This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) and the General Services Administration Acquisition Regulation (GSAR), applicable to e-marketplace model<sup>1</sup> contracts awarded under the program established pursuant to Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Public Law 115–91; 41 U.S.C. 1901 note (amended by P.L. 115-232 (August 13, 2018))), Procurement Through Commercial e-Commerce Portals.

The statute requires, “[a]ll laws, including laws that set forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, apply to the program established ... unless otherwise provided in this section.”<sup>2</sup> While requiring the applicability of laws, the law also grants GSA discretion in the establishment of the program. It states:

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<sup>1</sup> GSA’s market research identified three commercial e-commerce portal models: e-procurement, e-marketplace, and e-commerce. The e-procurement model is a software-as-a-service managed by the buying organization that aggregates offerings from suppliers—many from outside marketplaces—to provide a larger supplier pool and horizontal price comparisons. The e-marketplace model connects buyers online with a portal provider’s proprietary products, third-party vendors, or both. The e-commerce model is used by companies to sell only their own proprietary items or wholesale products. GSA’s initial proof of concept is testing the e-marketplace model.

<sup>2</sup> Id. at subparagraph (f)(1)

The Administrator shall carry out the program in accordance with this section, through multiple contracts with multiple commercial e-commerce portal providers, and shall design the program to be implemented in phases with the objective of enabling Government-wide use of such portals.<sup>3</sup>

By exercising its discretion to narrow the applicability of certain FAR and GSAR clauses, GSA can best carry out the direction of Congress.

The class deviation applies to contracts for the operation of portals of the e-marketplace model under the established program. Orders placed by ordering agencies through e-marketplace providers are limited to the micro-purchase threshold and will be treated as micro-purchases.

## **2. Background.**

Section 846 of the FY 2018 NDAA, Procurement Through Commercial e-Commerce Portals, directs GSA to—

...establish a program to procure commercial products through commercial e-commerce portals for purposes of enhancing competition, expediting procurement, enabling market research, and ensuring reasonable pricing of commercial products. [GSA] shall carry out the program in accordance with [section 846], through multiple contracts with multiple commercial e-commerce portal providers, and shall design the program to be implemented in phases with the objective of enabling Government-wide use of such portals.<sup>4</sup>

Additionally, the Conference Report accompanying the FY 2018 NDAA noted the following in regards to section 846—

The conferees encourage the Administrator, General Services, to resist the urge to make changes to the existing features, terms and conditions, and business models of available e-commerce portals, but rather demonstrate the government's willingness to adapt the way it does business.<sup>5</sup>

Section 846 also provided a framework for GSA to follow in implementing the program. GSA has completed the first two implementation phases required by the statute, Phase I: Implementation Plan and Phase II: Market Analysis and Consultation, and is now conducting Phase III: Program Implementation Guidance. GSA's market outreach during the first two phases included two public meetings, two requests for information published in the Federal Register<sup>6</sup>, a draft solicitation on FedBizOpps<sup>7</sup>, and numerous small meetings with the private sector and customer agencies.

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<sup>3</sup> Id. at paragraph (a).

<sup>4</sup> Id.

<sup>5</sup> *National Defense Authorization Act for Fiscal Year 2018: Conference Report*. Washington, D.C.: U.S. G.P.O., 2017. <https://www.congress.gov/115/crpt/hrpt404/CRPT-115hrpt404.pdf>

<sup>6</sup> Federal Register notices were posted on December 15, 2017 (82 FR 59619) and June, 15, 2018 (83 FR 27989)

GSA found through these activities that many of the standard terms and conditions applicable to a typical FAR commercial items contract run contrary to the “existing features, terms and conditions, and business models of available e-commerce portals.”<sup>8</sup>

As GSA prepares to issue its solicitation for the first Procurement Through Commercial e-Commerce Portals Program proof of concept for the e-marketplace model, it must, as the conferees noted, “adapt the way it does business.”<sup>9</sup> Accordingly, GSA is exempting the e-marketplace provider from all requirements normally applicable to the commercial services acquisitions under FAR Part 12 except those that are—

- Required by statute or Executive Order;
- Considered a basic necessity of federal contracting; or
- Necessary for program success or achievement of a Government public policy objective.

In this way, and by limiting the proof of concept to micro-purchases, this deviation helps GSA achieve the balance of interests required by the statute. It ensures all necessary procurement laws apply and GSA follows commercial practices to the maximum extent practicable.

The methodology for determining from which requirements portal provider solicitations and contracts will be exempt is shown in [Attachment C](#).<sup>10</sup>

### 3. Authority.

This class deviation is issued—

- Under the authority of FAR 1.404 and General Services Administration Acquisition Manual (GSAM) 501.404; and
- Following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

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<sup>7</sup> Draft Solicitation for Commercial Platforms Initiative, solicitation number 47QSCC19R0429. Posted on FedBizOpps.gov on July 31, 2019.

<sup>8</sup> *National Defense Authorization Act for Fiscal Year 2018: Conference Report*. Washington, D.C.: U.S. G.P.O, 2017 at p. 878. <https://www.congress.gov/115/crpt/hrpt404/CRPT-115hrpt404.pdf>

<sup>9</sup> *National Defense Authorization Act for Fiscal Year 2018: Conference Report*. Washington, D.C.: U.S. G.P.O, 2017 at p. 879. <https://www.congress.gov/115/crpt/hrpt404/CRPT-115hrpt404.pdf>

<sup>10</sup> A provision or clause from which a portal provider solicitation or contract is determined not to be exempt is not necessarily required to be included in the portal provider solicitation or contract. The contracting officer may still tailor, or choose not to apply, a provision or clause as allowable under existing FAR authorities. For example, portal provider solicitations are not exempted from FAR 52.212-1(b), *Submission of offers*, per this class deviation, but the contracting officer may still tailor the instructions at FAR 52.212-1(b), in accordance with FAR 12.302, as appropriate for the acquisition.

#### **4. Deviation.**

The FAR and GSAR class deviation text for the prescription of provisions and clauses is shown in [Attachment A](#). The FAR class deviation text for provisions and clauses is shown in [Attachment B](#).

#### **5. Effective Date.**

This deviation is effective immediately.

#### **6. Expiration Date.**

This class deviation expires upon incorporation of the changes into the FAR and GSAR, or upon expiration of the final e-marketplace provider contract awarded under the Procurement through Commercial e-Commerce Portals Program.

#### **7. Point of Contact.**

Questions regarding this class deviation should be directed to the General Services Acquisition Policy Division at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov).

#### **Attachments**

[Attachment A: Deviation Text for Solicitation Provision and Contract Clause Prescriptions](#)

[Attachment B: Deviation Text for Solicitation Provisions and Contract Clauses](#)

[Attachment C: Methodology](#)

# Attachment A: Deviation Text for Solicitation Provision and Contract Clause Prescriptions

Additions are in **[bold/bracketed]** text. Deletions are in ~~[strikethrough]~~ text.

Asterisks are used to show that the preceding or following coverage currently in the Federal Acquisition Regulation remains unchanged:

- Five asterisks (\*\*\*\*\* ) indicates a whole paragraph, including its subordinate paragraphs, is not changed.
- Three asterisks (\*\*\*) indicates the text at a subordinate level has changed but the higher level paragraphs remain unchanged.

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## Federal Acquisition Regulation

The baseline for the following line-in/line-out text is Federal Acquisition Circular (FAC) 2019-05, effective August 13, 2019.

### Part 12 - Acquisition of Commercial Items

#### Subpart 12.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

##### 12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\*\*\*\*\*

(d) \*\*\*

~~(3) Insert the provision at 52.204-16, Commercial and Government Entity Code Reporting, as prescribed in 4.1804(a).~~

~~(4) Insert the clause at 52.204-18, Commercial and Government Entity Code Maintenance, as prescribed in 4.1804(c).~~

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~~(7) Insert the provision at 52.207-6, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), as prescribed at 7.107-6.~~

~~(8) Insert the provision at 52.209-7, Information Regarding Responsibility Matters, as prescribed in 9.104-7(b).~~

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~~(11) Insert the clause at 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in 25.301-4.~~

~~(12) Insert the clause at 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, as prescribed in 32.009-2.~~

(e) \* \* \*

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. ~~If the provision at 52.212-2 is used, paragraph (b) provides for the evaluation of options.~~

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## General Services Administration Acquisition Regulation

The baseline for the following line-in/line-out text is Change 102, effective August 21, 2019.

### Part 512 - Acquisition of Commercial Items

#### Subpart 512.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

##### 512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\* \* \* \* \*

~~(e) GSA has a deviation to revise certain paragraphs of FAR clause 52.212-4. Use clause 552.212-4 Contract Terms and Conditions – Commercial Items (FAR DEVIATION), for acquisitions of commercial items in lieu of FAR 52.212-4 or 52.212-4 Alternate I. The contracting officer may tailor this clause in accordance with FAR 12.302 and GSAM 512.302.~~

# Attachment B: Deviation Text for Solicitation Provisions and Contract Clauses

Additions are in **[bold/bracketed]** text. Deletions are in ~~[strikethrough]~~ text.

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## Federal Acquisition Regulation

The baseline for the following line-in/line-out text is Federal Acquisition Circular (FAC) 2019-05, effective August 13, 2019.

### **52.212-1 Instructions to Offerors-Commercial Items (DEVIATION).**

Insert the following provision in solicitations for commercial e-commerce portal provider services pursuant to Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 41 U.S.C. 1901 note), Procurement Through Commercial e-Commerce Portals.

#### **Instructions to Offerors-Commercial Items (OCT 2018) (DEVIATION)**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet ([SF 1449](#)). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](#), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR [52.212-3](#) (see FAR [52.212-3](#)(b) for those representations and certifications that the offeror shall complete electronically);

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the [SF 1449](#), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

~~(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.~~

~~(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with [subpart 4.10](#) of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.~~

~~(f)~~**(d)** Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

~~(g)~~~~(e)~~ *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

~~(h) Multiple awards~~. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

~~(i) Availability of requirements documents cited in the solicitation.~~

~~(1) (i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to GSA Federal Supply Service Specifications Section Suite 8100 470 East L'Enfant Plaza, SW Washington, DC 20407 Telephone (202) 619-8925 Facsimile (202) 619-8978.~~

~~(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.~~

~~(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:~~

~~(i) ASSIST (<https://assist.dla.mil/online/start/>).~~

~~(ii) Quick Search (<http://quicksearch.dla.mil/>).~~

~~(iii) ASSISTdocs.com (<http://assistdocs.com>).~~

~~(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by-~~

~~(i) Using the ASSIST Shopping Wizard (<https://assist.dla.mil/wizard/index.cfm>);~~

~~(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or~~

~~(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.~~

~~(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.~~

~~(j)[(f)] *Unique entity identifier.* (Applies to all offers exceeding \$3,500, and offers of \$3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM).) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at [www.sam.gov](http://www.sam.gov) for establishing the unique entity identifier.~~

~~(k) [Reserved]~~

~~(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:~~

~~(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.~~

~~(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.~~

~~(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.~~

~~(4) A summary of the rationale for award;~~

~~(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.~~

~~(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.~~

(End of provision)

### **52.212-3 Offeror Representations and Certifications-Commercial Items (DEVIATION).**

Insert the following provision in solicitations for commercial e-commerce portal provider services under the program established pursuant to Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 41 U.S.C. 1901 note), Procurement Through Commercial e-Commerce Portals.

#### **Offeror Representations and Certifications-Commercial Items (OCT 2018) (DEVIATION)**

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) accessed through <https://www.sam.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (u) of this provision.

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

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Highest-level owner” means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

“Immediate owner” means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

“Inverted domestic corporation”, means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

~~“Manufactured end product” means any end product in product and service codes (PSCs) 1000-9999, except—~~

- ~~(1) PSC 5510, Lumber and Related Basic Wood Materials;~~
- ~~(2) Product or Service Group (PSG) 87, Agricultural Supplies;~~
- ~~(3) PSG 88, Live Animals;~~
- ~~(4) PSG 89, Subsistence;~~
- ~~(5) PSC 9410, Crude Grades of Plant Materials;~~
- ~~(6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;~~
- ~~(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;~~
- ~~(8) PSC 9610, Ores;~~
- ~~(9) PSC 9620, Minerals, Natural and Synthetic; and~~
- ~~(10) PSC 9630, Additive Metal Materials.~~

~~“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.~~

~~“Predecessor” means an entity that is replaced by a successor and includes any predecessors of the predecessor.~~

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

“Sensitive technology”—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Small disadvantaged business concern”, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation

~~“Successor” means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.~~

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

“Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b) (1) *Annual Representations and Certifications.* Any changes provided by the Offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM.

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the Offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR [52.212-3](#), Offeror Representations and Certifications-Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), at the time this offer is submitted and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs \_\_\_\_\_.

*[Offeror to identify the applicable paragraphs at (c) through (u) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]*

*These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.*

*Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]*

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it  is,  is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph(c)(1) of this provision.] The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, that it  is,  is not a small disadvantaged business concern as defined in 13 CFR124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is,  is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that—

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program

participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that—

(i) It  is,  is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [*The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.*] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

**Note:** Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: \_\_\_\_\_

(10) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph(c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this

provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It  has,  has not filed all required compliance reports.

(2) *Affirmative Action Compliance*. The offeror represents that—

(i) It  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 <http://uscode.house.gov/> U.S.C. 1352)*. (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

~~(f) *Buy American Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), Buy American Supplies, is included in this solicitation.)~~

~~(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined,~~

~~produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off the shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Supplies.”~~

(2) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

~~(3) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.~~

~~(g) (1) Buy American Free Trade Agreements Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Free Trade Agreements Israeli Trade Act, is included in this solicitation.)~~

~~(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off the shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Free Trade Agreements Israeli Trade Act.”~~

~~(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Free Trade Agreements Israeli Trade Act”:~~

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

{List as necessary}

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Free Trade Agreements Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

{List as necessary}

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) ~~Buy American Free Trade Agreements Israeli Trade Act Certificate, Alternate I.~~ If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:  
 (g)(1)(ii) ~~The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Free Trade Agreements Israeli Trade Act”:~~

Canadian End Products:

Line Item No.
_____
_____
_____

{List as necessary}

~~(3) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:~~

~~(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:~~

~~Canadian or Israeli End Products:~~

<del>Line Item No.</del>	<del>Country of Origin</del>
<del>_____</del>	<del>_____</del>
<del>_____</del>	<del>_____</del>
<del>_____</del>	<del>_____</del>

~~{List as necessary}~~

~~(4) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III. If Alternate III to the clause at [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:~~

~~(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:~~

~~Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:~~

<del>Line Item No.</del>	<del>Country of Origin</del>
<del>_____</del>	<del>_____</del>
<del>_____</del>	<del>_____</del>
<del>_____</del>	<del>_____</del>

~~{List as necessary}~~

~~(5) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)~~

~~(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S. made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”~~

~~(ii) The offeror shall list as other end products those end products that are not U.S. made or designated country end products.~~

Other End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

*{List as necessary}*

~~(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S. made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S. made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.~~

~~(h)~~**[(f)]** *Certification Regarding Responsibility Matters (Executive Order 12689).* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1)  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2)  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph ~~(h)~~**[(f)]**(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending

administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.* (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

~~(f)~~(g) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph ~~(f)~~(g)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at [22.1503\(b\)](#).]*

(1) *Listed end products.*

Line Item No.	Country of Origin
_____	_____

--	--

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (g)(1) of this provision, then the offeror must certify to either (g)(2)(i) or (g)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (g)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

~~(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—~~

~~(1)  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or~~

~~(2)  Outside the United States.~~

~~(k) *Certificates regarding exemptions from the application of the Service Contract Labor Standards* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]~~

~~(1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4\(c\)\(1\)](#). The offeror  does  does not certify that—~~

~~(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;~~

~~(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4\(c\)\(2\)\(ii\)](#)) for the maintenance, calibration, or repair of such equipment; and~~

~~(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.~~

~~(2) Certain services as described in FAR [22.1003-4\(d\)\(1\)](#). The offeror  does  does not certify that—~~

~~(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;~~

~~(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));~~

~~(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and~~

~~(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.~~

~~(3) If paragraph (k)(1) or (k)(2) of this clause applies—~~

~~(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and~~

~~(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.~~

~~(h) **[(h)] Taxpayer Identification Number (TIN)** ( [26 U.S.C. 6109](#), [31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to the SAM to be eligible for award.)~~

(1) All offerors must submit the information required in paragraphs ~~(h)~~**(h)**(3) through ~~(h)~~**(h)**(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\) and 3325\(d\)](#), reporting requirements of [26 U.S.C. 6041, 6041A, and 6050M](#), and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN).*

- TIN: \_\_\_\_\_.
- TIN has been applied for.
- TIN is not required because:
  - Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
  - Offeror is an agency or instrumentality of a foreign government;
  - Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

(5) *Common parent.*

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

~~(m)~~[(i)] *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

~~(n)~~[(j)] *Prohibition on Contracting with Inverted Domestic Corporations.*

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at [9.108-2\(b\)](#) applies or the requirement is waived in accordance with the procedures at [9.108-4](#).

(2) *Representation.* The Offeror represents that—

- (i) It  is,  is not an inverted domestic corporation; and
- (ii) It  is,  is not a subsidiary of an inverted domestic corporation.

~~(o)~~[(k)] *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.*

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) *Representation and Certifications.* Unless a waiver is granted or an exception applies as provided in paragraph ~~(o)~~[(k)](3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

(3) The representation and certification requirements of paragraph ~~(e)~~**[(k)]**(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification ~~(e.g., 52.212-3(g) or a comparable agency provision)~~; and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

~~(p) Ownership or Control of Offeror. (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation).~~

~~(1) The Offeror represents that it  has or  does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.~~

~~(2) If the Offeror indicates "has" in paragraph (p)(1) of this provision, enter the following information:~~

~~Immediate owner CAGE code: \_\_\_\_\_.~~

~~Immediate owner legal name: \_\_\_\_\_.~~

~~(Do not use a "doing business as" name)~~

~~Is the immediate owner owned or controlled by another entity:  Yes or  No.~~

~~(3) If the Offeror indicates "yes" in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:~~

~~Highest-level owner CAGE code: \_\_\_\_\_.~~

~~Highest-level owner legal name: \_\_\_\_\_.~~

~~(Do not use a “doing business as” name)~~

~~(q)[(1)] Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.~~

~~(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—~~

~~(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or~~

~~(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.~~

~~(2) The Offeror represents that—~~

~~(i) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and~~

~~(ii) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.~~

~~(r) *Predecessor of Offeror.* (Applies in all solicitations that include the provision at [52.204-16](#), Commercial and Government Entity Code Reporting.)~~

~~(1) The Offeror represents that it  is or  is not a successor to a predecessor that held a Federal contract or grant within the last three years.~~

~~(2) If the Offeror has indicated “is” in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):~~

~~Predecessor CAGE code: (or mark "Unknown").~~

~~Predecessor legal name:.~~

~~(Do not use a "doing business as" name).~~

~~(s) [Reserved].~~

~~(t)[(m)] *Public Disclosure of Greenhouse Gas Emissions and Reduction Goals.*~~

~~Applies in all solicitations that require offerors to register in SAM ([12.301](#)(d)(1)).~~

~~(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.~~

~~(2) Representation. [Offeror to check applicable block(s) in paragraph (t)[(m)](2)(i) and (ii)]. (i) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.~~

~~(ii) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.~~

~~(iii) A publicly accessible website includes the Offeror's own website or a recognized, third-party greenhouse gas emissions reporting program.~~

~~(3) If the Offeror checked "does" in paragraphs (t)[(m)](2)(i) or (t)[(m)](2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported:\_\_\_\_\_.~~

~~(u)[(n)] (1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a~~

designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph ~~(u)~~**[(n)]**(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) *Representation.* By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(End of clause)

#### **52.212-4 Contract Terms and Conditions—Commercial Items (DEVIATION).**

Insert the following clause in solicitations and contracts for commercial e-commerce portal provider services under the program established pursuant to Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91; 41 U.S.C. 1901 note), Procurement Through Commercial e-Commerce Portals.

#### **Contract Terms and Conditions—Commercial Items (OCT 2018) (DEVIATION)**

~~(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—~~

~~(1) Within a reasonable time after the defect was discovered or should have been discovered; and~~

~~(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.~~

~~(b) *Assignment*. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.~~

~~(c) *Changes*. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.~~

~~(d)[(a)] *Disputes*. This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.~~

~~(e)[(b)] *Definitions*. The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.~~

~~(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.~~

~~(g) *Invoice*. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—~~

~~(i) Name and address of the Contractor;~~

~~(ii) Invoice date and number;~~

- ~~(iii) Contract number, line item number and, if applicable, the order number;~~
- ~~(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;~~
- ~~(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;~~
- ~~(vi) Terms of any discount for prompt payment offered;~~
- ~~(vii) Name and address of official to whom payment is to be sent;~~
- ~~(viii) Name, title, and phone number of person to notify in event of defective invoice; and~~
- ~~(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.~~
- ~~(x) Electronic funds transfer (EFT) banking information.~~

~~(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.~~

~~(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer Other Than System for Award Management), or applicable agency procedures.~~

~~(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.~~

~~(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.~~

~~(h)**[(c)]** Patent indemnity.~~ The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

~~(i)**[(d)]** Payment.—~~

~~(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.~~

~~(2)~~**[(1)]** *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C.3903](#)) and prompt payment regulations at 5 CFR Part 1315.

~~(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.~~

~~(4)~~**[(2)]** *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

~~(5)~~**[(3)]** *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

~~(6)~~**[(4)]** *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in ~~(i)(6)(v)~~**[(d)(4)(v)]** of this

clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

~~(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:~~

~~(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or~~

~~(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.~~

~~(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.~~

~~(h)~~**(e)** *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

~~(m)~~**(f)** *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

~~(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.~~

~~(e) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.~~

~~(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.~~

~~(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.~~

~~(f) [(g)] *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [41 U.S.C. 4712](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.~~

**[(h) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:**

**(1) The schedule of supplies/services.**

**(2) The Disputes, Payments, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements - Unenforceable Clauses paragraphs of this clause.**

**(3) The clause at 52.212-5.**

**(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements— Unenforceable Clauses provision.**

**(5) Solicitation provisions if this is a solicitation.**

**(6) Other paragraphs of this clause.**

**(7) The Standard Form 1449.**

**(8) Other documents, exhibits, and attachments.**

**(9) The specification.]**

~~(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:~~

~~(1) The schedule of supplies/services.~~

~~(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;~~

~~(3) The clause at [52.212-5](#).~~

~~(4) Addenda to this solicitation or contract, including any license agreements for computer software.~~

~~(5) Solicitation provisions if this is a solicitation.~~

~~(6) Other paragraphs of this clause.~~

~~(7) The [Standard Form 1449](#).~~

~~(8) Other documents, exhibits, and attachments.~~

~~(9) The specification.~~

~~(t) [Reserved]~~

~~(u) Unauthorized Obligations.~~

~~(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:~~

~~(i) Any such clause is unenforceable against the Government.~~

~~(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.~~

~~(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.~~

~~(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.~~

**[(i) Unauthorized Obligations.**

**(1) Except as stated in paragraph (i)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in [502.101](#)) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation ([31 U.S.C. 1341](#)), the following shall govern:**

**(i) Any such language, provision, or clause is unenforceable against the Government.**

**(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.**

**(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.**

**(2) Paragraph (i)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.]**

~~(v) [(j)]~~ Incorporation by reference. The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

**[(k) Commercial supplier agreements unenforceable clauses. When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in [502.101](#)), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, “this agreement” means the commercial supplier agreement:**

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR 12).

(ii) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in paragraph (a) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) Updating terms.

**(A) After award, the contractor may unilaterally revise commercial supplier agreement terms: if they are not material. A material change is defined as:**

- (1) Terms that change Government rights or obligations;**
- (2) Terms that increase Government prices;**
- (3) Terms that decrease overall level of service; or**
- (4) Terms that limit any other Government right addressed elsewhere in this contract.**

**(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.**

**(C) Any agreement license terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.**

**(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.**

**(viii) Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with [28 U.S.C. 516](#).**

**(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:**

**(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.**

**(B) This charge, if disputed by the ordering activity, will be resolved in accordance with paragraph (a) (Disputes) of this clause; no payment obligation**

shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (j)(1), the language, provisions, or clause of paragraph (k)(1) shall prevail to the extent of such inconsistency.]

#### **52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (DEVIATION).**

Insert the following clause in solicitations and contracts for commercial e-commerce portal provider services under the program established pursuant to Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91; 41 U.S.C. 1901 note), Procurement Through Commercial e-Commerce Portals.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

## **Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (AUG 2019) (DEVIATION)**

(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) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) [52.233-3](#), Protest After Award (Aug 1996) ([31 U.S.C. 3553](#)).

(6) [52.233-4](#), Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

(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.]*

(1) ~~[52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).~~

(2) ~~[(1)]~~ [52.203-13](#), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](#))).



- ~~□ (15) (i) [52.219-7](#), Notice of Partial Small Business Set Aside (June 2003) ([15 U.S.C. 644](#)).~~
  - ~~□ (ii) Alternate I (Oct 1995) of [52.219-7](#).~~
  - ~~□ (iii) Alternate II (Mar 2004) of [52.219-7](#).~~
- ~~□ (16) [52.219-8](#), Utilization of Small Business Concerns (Oct 2018) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).~~
- ~~(17)~~**[(3)]** (i) [52.219-9](#), Small Business Subcontracting Plan (Aug 2018) ([15 U.S.C. 637\(d\)\(4\)](#))
  - (ii) Alternate I (Jan 2017) of [52.219-9](#).
  - (iii) Alternate II (Nov 2016) of [52.219-9](#).
  - (iv) Alternate III (Nov 2016) of [52.219-9](#).
  - (v) Alternate IV (Aug 2018) 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 (Jan 2017) ([15 U.S.C. 637\(a\)\(14\)](#)).~~
- ~~□ (20) [52.219-16](#), Liquidated Damages-Subcontracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).~~
- ~~□ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set Aside (Nov 2011) ([15 U.S.C. 657f](#)).~~
- ~~(22)~~**[(4)]** [52.219-28](#), Post Award Small Business Program Rerepresentation (Jul 2013) ([15 U.S.C. 632\(a\)\(2\)](#)).
- ~~□ (23) [52.219-29](#), Notice of Set Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) ([15 U.S.C. 637\(m\)](#)).~~
- ~~□ (24) [52.219-30](#), Notice of Set Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) ([15 U.S.C. 637\(m\)](#)).~~
- ~~(25)~~**[(5)]** [52.222-3](#), Convict Labor (June 2003) (E.O.11755).

- ~~(26)~~**[(6)]** [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (Jan 2018) (E.O.13126).
- ~~(27)~~**[(7)]** [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).
- ~~(28)~~**[(8)]** (i) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O.11246).
  - (ii) Alternate I (Feb 1999) of [52.222-26](#).
- ~~(29)~~ (i) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015) (~~[38 U.S.C. 4212](#)~~).
  - (ii) Alternate I (July 2014) of [52.222-35](#).
- ~~(30)~~ (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) (~~[29 U.S.C.793](#)~~).
  - (ii) Alternate I (July 2014) of [52.222-36](#).
- ~~(31)~~ [52.222-37](#), Employment Reports on Veterans (Feb 2016) (~~[38 U.S.C. 4212](#)~~).
- ~~(32)~~**[(9)]** [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- ~~(33)~~**[(10)]** (i) [52.222-50](#), Combating Trafficking in Persons (Jan 2019) ([22 U.S.C. chapter 78](#) and E.O. 13627).
  - (ii) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
- ~~(34)~~**[(11)]** [52.222-54](#), Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)
  - ~~(35)~~ (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA Designated Items (May 2008) (~~[42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)~~). (Not applicable to the acquisition of commercially available off-the-shelf items.)
    - (ii) Alternate I (May 2008) of [52.223-9](#) (~~[42 U.S.C. 6962\(i\)\(2\)\(C\)](#)~~). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ~~(36)~~**[(12)]** [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

- ~~(37)~~**[(13)]** [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun2016) (E.O. 13693).
- ~~(38)~~**[(14)]** (i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).
  - (ii) Alternate I (Oct 2015) of [52.223-13](#).
- ~~(39)~~**[(15)]** (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).
  - (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. 8259b](#)).
- ~~(41)~~**[(16)]** (i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).
  - (ii) Alternate I (Jun 2014) of [52.223-16](#).
- ~~(42)~~**[(17)]** [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).
- ~~(43)~~**[(18)]** [52.223-20](#), Aerosols (Jun 2016) (E.O. 13693).
- ~~(44)~~**[(19)]** [52.223-21](#), Foams (Jun 2016) (E.O. 13693).
- ~~(45)~~**[(20)]** (i) [52.224-3](#) Privacy Training (Jan 2017) (5 U.S.C. 552 a).
  - (ii) Alternate I (Jan 2017) of [52.224-3](#).
- ~~(46)~~ [52.225-1](#), Buy American Supplies (May 2014) ([41 U.S.C. chapter 83](#)).
- ~~(47)~~ (i) [52.225-3](#), Buy American Free Trade Agreements-Israeli Trade Act (May 2014) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
  - (ii) Alternate I (May 2014) of [52.225-3](#).
  - (iii) Alternate II (May 2014) of [52.225-3](#).
  - (iv) Alternate III (May 2014) of [52.225-3](#).



(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.]

- (1) [52.222-17](#), Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).
- ~~(2) [52.222-41](#), Service Contract Labor Standards (Aug 2018) ([41 U.S.C. chapter 67](#)).~~
- ~~(3) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).~~
- ~~(4) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).~~
- ~~(5) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).~~
- ~~(6) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).~~
- ~~(7) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ([41 U.S.C. chapter 67](#)).~~
- (8)**[(2)]** [52.222-55](#), Minimum Wages Under Executive Order 13658 (Dec 2015).
- (9)**[(3)]** [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).
- ~~(10) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (May 2014) ([42 U.S.C. 1792](#)).~~

(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) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](#)).

~~(ii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).~~

~~(iii)~~**(ii)** [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

~~(iv)~~**(iii)** [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) ~~52.219-8~~, Utilization of Small Business Concerns (Oct 2018) (~~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 \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include ~~52.219-8~~ in lower tier subcontracts that offer subcontracting opportunities.

(vi)~~[(iv)]~~ 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

(vii)~~[(v)]~~ 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii)~~[(vi)]~~ 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).

(ix) ~~52.222-35~~, Equal Opportunity for Veterans (Oct 2015) (~~38 U.S.C.4212~~).

(x) ~~52.222-36~~, Equal Opportunity for Workers with Disabilities (Jul 2014) (~~29 U.S.C.793~~).

(xi) ~~52.222-37~~, Employment Reports on Veterans (Feb 2016) (~~38 U.S.C.4212~~)

(xii)~~[(vii)]~~ 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.

(xiii) ~~52.222-41~~, Service Contract Labor Standards (Aug 2018) (~~41 U.S.C. chapter 67~~).

(xiv)~~[(viii)]~~ (A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (Mar 2015) of 52.222-50(22 U.S.C. chapter 78 and E.O 13627).

(xv) ~~52.222-51~~, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Requirements (May 2014) (~~41 U.S.C. chapter 67~~).

(xvi) ~~52.222-53~~, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services Requirements (May 2014) (~~41 U.S.C. chapter 67~~).

(xvii)~~[(ix)]~~ 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).

~~(xviii)~~**[(x)]** [52.222-55](#), Minimum Wages Under Executive Order 13658 (Dec 2015).

~~(xix)~~**[(xi)]** [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

~~(xx)~~**[(xii)]** (A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).

(B) Alternate I (Jan 2017) of [52.224-3](#).

~~(xxi)~~ [52.225-26](#), ~~Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).~~

~~(xxii)~~ [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](#)~~.

~~(xxiii)~~**[(xiii)]** [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)

## Attachment C: Methodology

The Office of Acquisition Policy used a five-step methodology to determine which clauses and provisions normally required for commercial services contracts from which the e-marketplace provider contracts will be exempt. The methodology is as follows: (1) Baseline; (2) Origin of Requirements; (3) Identifying Mandatory Requirements; (4) Analyzing Non-Mandatory Requirements; and (5) Developing Deviations to FAR Part 12 Clauses and Provisions.<sup>11</sup>

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### Step 1: Baseline

The first step is to identify the baseline of terms and conditions (i.e. requirements) that constitute the framework of a contract for commercial services.

FAR Part 12 prescribes policies and procedures applicable to the acquisition of commercial items. These requirements are almost exclusively consolidated into the following five solicitation provisions and contract clauses:

- (1) 52.212-1, *Instructions to Offerors – Commercial Items*
- (2) 52.212-2, *Evaluation – Commercial items*
- (3) 52.212-3, *Offeror Representations and Certifications – Commercial Items*
- (4) 52.212-4, *Contract Terms and Conditions – Commercial Items*
- (5) 52.212-5, *Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items*

Additionally, a small number of additional requirements applicable to commercial item acquisitions are set forth in FAR 12.301(d), *Other required provisions and clauses*, and FAR 12.301(e), *Discretionary use of FAR provisions and clauses*.

The baseline review of these solicitation provisions and contract clauses identified 171 separate requirements normally applicable to acquisitions of commercial services, including the acquisition of e-marketplace providers under this program.

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### Step 2: Origin of Requirements

This step consisted of identifying the basis of the requirements in the FAR Part 12 solicitation provisions and contract clauses—whether they are based in statute, executive order (EO), or applied at the discretion of the FAR Council.

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<sup>11</sup> This methodology is similar to that used to satisfy section 839 of the FY 2019 NDAA<sup>#</sup>, which directs the FAR Council to review all requirements that currently apply to commercial item contracts and propose revisions to the FAR to eliminate all those requirements unless there is a “specific reason” to continue applying the requirement to commercial item contracts.

The review in this step revealed that of the 171 total requirements for acquisition of commercial items: 108 were based in statute, 20 were based in EOs, and 43 were the result of discretionary decisions made by the FAR Council.

#### **A. 108 Requirements Based in Statute**

- (1) 52.212-1(a) NAICS code/size standard
- (2) 52.212-1(b) Submission of offerors (first sentence)
- (3) 52.212-1(f) Late submissions, modifications, revisions, etc. (first sentence)
- (4) 52.212-1(g) Contract award
- (5) 52.212-1(j) Unique entity identifier
- (6) 52.212-1(l) Debriefing
- (7) 52.212-2(a) Evaluation factors
- (8) 52.212-2(b) Options
- (9) 52.212-3(c) Small Business Representations
- (10) 52.212-3(e) Certification Regarding Payments to Influence Federal Transactions
- (11) 52.212-3(f) Buy American Certificate
- (12) 52.212-3(g) Buy American Free Trade Agreements Israeli Trade Act Certificate
- (13) 52.212-3(l) Taxpayer Identification Number
- (14) 52.212-3(m) Restricted business operations in Sudan
- (15) 52.212-3(n) Prohibition on Contracting with Inverted Domestic Corporations
- (16) 52.212-3(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran
- (17) 52.212-3(p) Ownership or Control of Offeror
- (18) 52.212-3(q) Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law
- (19) 52.212-3(r) Predecessor of Offeror
- (20) 52.212-3(u) addressing Internal Confidentiality Agreements
- (21) 52.212-4(a) Inspection/Acceptance
- (22) 52.212-4(b) Assignment
- (23) 52.212-4(d) Disputes
- (24) 52.212-4(h) Patent Indemnity
- (25) 52.212-4(i)(1) Items accepted
- (26) 52.212-4(i)(2) Prompt Payment
- (27) 52.212-4(i)(3) Electronic Funds Transfer
- (28) 52.212-4(i)(4) Discount
- (29) 52.212-4(i)(5) Overpayment
- (30) 52.212-4(i)(6) Interest
- (31) 52.212-4(q) Other compliances
- (32) 52.212-4(r) 18 U.S.C. 431 relating to officials not to benefit
- (33) 52.212-4(r) 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections
- (34) 52.212-4(r) 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts
- (35) 52.212-4(r) 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards
- (36) 52.212-4(r) 41 U.S.C. chapter 87, Kickbacks

- (37) 52.212-4(r) 41 U.S.C. chapter 21 relating to procurement integrity
- (38) 52.212-5(d) Comptroller General Examination of Record
- (39) 52.203-6, Restrictions on Subcontractor Sales to the Government
- (40) 52.203-13, Contractor Code of Business Ethics and Conduct
- (41) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009
- (42) 52.212-4(r) 49 U.S.C. 40118, Fly American
- (43) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- (44) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards
- (45) 52.204-14, Service Contract Reporting Requirements
- (46) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts
- (47) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
- (48) 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.
- (49) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
- (50) 52.207-6, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)
- (51) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
- (52) 52.209-7, Information Regarding Responsibility Matters
- (53) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters
- (54) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations
- (55) 52.209-12, Certification Regarding Tax Matters
- (56) 52.216-27, Single or Multiple Awards
- (57) 52.216-28, Multiple Awards for Advisory and Assistance Services
- (58) 52.217-3, Evaluation Exclusive of Options
- (59) 52.217-4, Evaluation of Options Exercised at Time of Contract Award
- (60) 52.217-5, Evaluation of Options
- (61) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award
- (62) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns
- (63) 52.219-6, Notice of Total Small Business Set-Aside
- (64) 52.219-7, Notice of Partial Small Business Set-Aside
- (65) 52.219-8, Utilization of Small Business Concerns
- (66) 52.219-9, Small Business Subcontracting Plan
- (67) 52.219-13, Notice of Set-Aside of Orders
- (68) 52.219-14, Limitations on Subcontracting
- (69) 52.219-16, Liquidated Damages—Subcontracting Plan
- (70) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside
- (71) 52.219-28, Post Award Small Business Program Rerepresentation
- (72) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns
- (73) 52.219-30, Notice of Set-Aside for, or Sole Source Award to,

Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program

- (74) 52.222-35, Equal Opportunity for Veterans
- (75) 52.222-36, Equal Opportunity for Workers with Disabilities
- (76) 52.222-37, Employment Reports on Veterans
- (77) 52.222-41, Service Contract Labor Standards
- (78) 52.222-42, Statement of Equivalent Rates for Federal Hires
- (79) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)
- (80) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment
- (81) 52.222-50, Combating Trafficking in Persons
- (82) 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan
- (83) 52.223-1, Biobased Product Certification
- (84) 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts
- (85) 52.223-4, Recovered Material Certification
- (86) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items
- (87) 52.223-15, Energy Efficiency in Energy-Consuming Products
- (88) 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts
- (89) 52.224-3, Privacy Training
- (90) 52.225-1, Buy American—Supplies
- (91) 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act
- (92) 52.225-5, Trade Agreements
- (93) 52.225-13, Restrictions on Certain Foreign Purchases
- (94) 52.225-26, Contractors Performing Private Security Functions Outside the United States
- (95) 52.226-3, Disaster or Emergency Area Representation
- (96) 52.226-4, Notice of Disaster or Emergency Area Set-Aside
- (97) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area
- (98) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations
- (99) 52.232-29, Terms for Financing of Purchases of Commercial Items
- (100) 52.232-30, Installment Payments for Commercial Items
- (101) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management
- (102) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management
- (103) 52.232-36, Payment by Third Party
- (104) 52.233-3, Protest After Award
- (105) 52.233-4, Applicable Law for Breach of Contract Claim
- (106) 52.239-1, Privacy or Security Safeguards
- (107) 52.242-5, Payments to Small Business Subcontractors
- (108) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels

**B. 20 Requirements Based in Executive Orders**

- (1) 52.212-3(d) Representations required to implement provisions of

- Executive Order 11246
- (2) 52.212-3(i) Certification Regarding Knowledge of Child Labor for Listed End Products
- (3) 52.212-3(t) Public Disclosure of Greenhouse Gas Emissions and Reduction Goals
- (4) 52.222-3, Convict Labor
- (5) 52.222-17, Nondisplacement of Qualified Workers
- (6) 52.222-19, Child Labor—Cooperation with Authorities and Remedies
- (7) 52.222-21, Prohibition of Segregated Facilities
- (8) 52.222-26, Equal Opportunity
- (9) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act
- (10) 52.222-54, Employment Eligibility Verification
- (11) 52.222-55, Minimum Wages Under Executive Order 13658
- (12) 52.222-62, Paid Sick Leave Under Executive Order 13706
- (13) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons
- (14) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners
- (15) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment
- (16) 52.223-14, Acquisition of EPEAT®-Registered Televisions
- (17) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products
- (18) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving
- (19) 52.223-20, Aerosols
- (20) 52.223-21, Foams

### **C. 43 Requirements Based on the FAR Council's Discretion**

- (1) 52.212-1(b) Submission of offers (after first sentence)
- (2) 52.212-1(c) Period for acceptance of offers
- (3) 52.212-1(d) Product samples
- (4) 52.212-1(e) Multiple offers
- (5) 52.212-1(f) Late submissions, modifications, revisions, etc (after first sentence)
- (6) 52.212-1(h) Multiple awards
- (7) 52.212-1(i) Availability of requirements documents
- (8) 52.212-3(b) Annual Representations and Certifications
- (9) 52.212-3(h) Certification Regarding Responsibility Matters
- (10) 52.212-3(j) Place of manufacture
- (11) 52.212-3(k) Certificates regarding exemptions from the application of the Service Contract labor Standards
- (12) 52.212-4(c) Changes
- (13) 52.212-4(f) Excusable delays
- (14) 52.212-4(g) Invoice
- (15) 52.212-4(j) Risk of loss
- (16) 52.212-4(k) Taxes
- (17) 52.212-4(l) Termination for Government's Convenience
- (18) 52.212-4(m) Termination for Cause

- (19) 52.212-4(n) Title
- (20) 52.212-4(o) Warranty
- (21) 52.212-4(p) Limitation of liability
- (22) 52.212-4(s) Order of precedence
- (23) 52.212-4(u) Unauthorized Obligations
- (24) 52.212-4(v) Incorporation by reference
- (25) 52.204-7, System for Award Management
- (26) 52.204-13, System for Award Management Maintenance
- (27) 52.204-16, Commercial and Government Entity Code Reporting
- (28) 52.204-18, Commercial and Government Entity Code Maintenance
- (29) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems
- (30) 52.216-18, Ordering
- (31) 52.216-19, Order Limitations
- (32) 52.216-20, Definite Quantity
- (33) 52.216-21, Requirements
- (34) 52.216-22, Indefinite Quantity
- (35) 52.217-3, Evaluation Exclusive of Options
- (36) 52.217-6, Option for Increased Quantity
- (37) 52.217-7, Option for Increased Quantity—Separately Priced Line Item
- (38) 52.217-8, Option to Extend Services
- (39) 52.217-9, Option to Extend the Term of the Contract
- (40) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements
- (41) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements
- (42) 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States
- (43) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors

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### Step 3 - Identifying Mandatory Non-Exempt Requirements<sup>12</sup>

This step entailed identifying the requirements that are not exempt because of statute or EO.

Pursuant to 41 U.S.C. 1906, agencies do not have discretion to exempt the application of laws to contracts for commercial items if the law (i) contains criminal or civil penalties or (ii) specifically refers to 41 U.S.C. 1906 and states that the law applies to contracts and subcontracts for commercial items. Of the 108 statutory requirements applicable to commercial items, 19 are based on statutory provisions that include criminal or civil

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<sup>12</sup> While some requirements are considered “mandatory” based on the explanation provided in this section, note that the prescription behind some of the requirements would not mandate the use of the clauses in the contracts with commercial e-marketplace model portal providers.

penalties and 5 are based on laws stating their applicability to acquisitions for commercial items. They are as follows:

**19 requirements based on statutory provisions with criminal or civil penalties:**

- (1) 52.212-3(c) Small Business Representations
- (2) 52.212-3(e) Certification Regarding Payments to Influence Federal Transactions\*
- (3) 52.212-4(i)(2) Prompt Payment
- (4) 52.212-4(i)(4) Discount
- (5) 52.212-4(i)(6) Interest
- (6) 52.212-4(r) 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts\*
- (7) 52.212-4(r) 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards
- (8) 52.212-4(r) 41 U.S.C. chapter 87, Kickbacks
- (9) 52.212-4(r) 41 U.S.C. chapter 21 relating to procurement integrity
- (10) 52.219-28, Post Award Small Business Program Rerepresentation
- (11) 52.222-50, Combating Trafficking in Persons
- (12) 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan
- (13) 52.224-3, Privacy Training
- (14) 52.225-13, Restrictions on Certain Foreign Purchases
- (15) 52.226-3, Disaster or Emergency Area Representation †
- (16) 52.226-4, Notice of Disaster or Emergency Area Set-Aside †
- (17) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area †
- (18) 52.239-1, Privacy or Security Safeguards
- (19) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels

**5 requirements based on laws stating their applicability to acquisitions for commercial items:**

- (1) 52.212-4(i)(5) Overpayment
- (2) 52.203-13, Contractor Code of Business Ethics and Conduct
- (3) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
- (4) 52.232-29, Terms for Financing of Purchases of Commercial Items
- (5) 52.232-30, Installment Payments for Commercial Items

Consideration was also given to whether a requirement was a prohibition that was linked to the use of appropriated funds. In order to ensure that the award of these contracts do not cause GSA to violate these prohibitions, these requirements are not being waived. The following 6 requirements are based on various statutes which specifically address the use of appropriated funds.<sup>13</sup>

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<sup>13</sup> Two other requirements were also based on provisions in appropriation laws which direct use of appropriated funds but were not included in this list because they are already accounted for in the 19 requirements that are based on statutory provisions that include civil or criminal penalties.

**6 requirements based on provisions in appropriation laws which direct use of appropriated funds:**

- (1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
- (2) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations
- (3) 52.209-12, Certification Regarding Tax Matters
- (4) 52.212-3(n) Prohibition on Contracting with Inverted Domestic Corporations
- (5) 52.212-3(q) Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law
- (6) 52.212-3(u) addressing Internal Confidentiality Agreements

Outside of the 108 requirements based in statute, 20 other requirements are based in EOs. Due to EOs being issued by the President of the United States and applicable to all executive agencies, it was determined these 20 requirements are not eligible to be waived without expressed Office of Management and Budget (OMB) authority.

**20 Requirements based in Executive Orders:**

- (1) 52.212-3(d) Representations required to implement provisions of Executive Order 11246
- (2) 52.212-3(i) Certification Regarding Knowledge of Child Labor for Listed End Products †
- (3) 52.212-3(t) Public Disclosure of Greenhouse Gas Emissions and Reduction Goals
- (4) 52.222-3, Convict Labor
- (5) 52.222-17, Nondisplacement of Qualified Workers †
- (6) 52.222-19, Child Labor—Cooperation with Authorities and Remedies †
- (7) 52.222-21, Prohibition of Segregated Facilities
- (8) 52.222-26, Equal Opportunity
- (9) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act
- (10) 52.222-54, Employment Eligibility Verification
- (11) 52.222-55, Minimum Wages Under Executive Order 13658 †
- (12) 52.222-62, Paid Sick Leave Under Executive Order 13706 †
- (13) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons †
- (14) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners †
- (15) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment †
- (16) 52.223-14, Acquisition of EPEAT®-Registered Televisions †
- (17) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products †
- (18) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving †
- (19) 52.223-20, Aerosols †
- (20) 52.223-21, Foams †

\* Requirements are also based on provisions in appropriation laws which direct use of appropriated funds

† While this requirement is considered “mandatory,” the prescription behind this would not mandate its use in the contracts with e-marketplace providers if they are not applicable.

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## Step 4 - Analyzing Non-Mandatory Requirements

The Office of Acquisition Policy, in coordination with the Commercial e-Commerce Portals project team in FAS, performed an extensive analysis of the applicable provisions and clauses for the upcoming e-marketplace provider acquisition under the program established under section 846 of the FY 2018 NDAA.

The Office of Acquisition Policy presumes that barring a statute or EO mandating its applicability and the determination that it is not of the type that has civil or criminal penalties or that is specifically named in the commercial items statutes or that the requirement is mandatory due to it being a prohibition under a funding statute, arguably such a requirement can be waived for the contracts with e-marketplace providers.

The Office of Acquisition policy identified 171 provisions and clauses (i.e. requirements) that normally apply to commercial item acquisitions. It determined 30 requirements were required by statute and 20 were determined to be required by EO. This left 121 other requirements, 78 of which are based in statute but eligible to be waived and 43 that are the result of discretionary decisions made by the FAR Council.

The final step of the Office of Acquisition Policy’s analysis sought to determine whether any of the remaining 121 requirements would be retained for the e-marketplace provider acquisition. Accordingly, each remaining requirement was analyzed to determine whether it is—

- Considered a basic necessity of federal contracting; or
- Necessary for program success or achievement of a Government public policy objective.

Accordingly, it determined 34 of the remaining 121 requirements should not be exempted by the class deviation. Below is a high-level explanation of why each requirement is non-exempt:

### **Requirements considered a basic necessity of contracting:**

#### Pre-award Requirements

The following provisions provide offerors necessary instructions for submitting a complete and timely offer.

- (1) 52.212-1(a) NAICS code/size standard
- (2) 52.212-1(b) Submission of offerors
- (3) 52.212-1(c) Period for acceptance of offers
- (4) 52.212-1(f) Late submissions, modifications, revisions, etc. (both first and

- remaining sentences)
- (5) 52.212-1(g) Contract award

The following provisions furnish requirements for information to be provided by offerors. Although SAM registration does not conform with commercial practices, the Office of Acquisition Policy determined requiring it would significantly streamline the amount of information offerors would have to provide GSA.

- (6) 52.212-1(j) Unique entity identifier
- (7) 52.204-7, System for Award Management

### Contract Award and Administration Requirements<sup>14</sup>

The following provisions and clauses require contractors to provide the Government basic business information it will need to administer contracts, or provide an administrative convenience to both the contractor and Government.

- (8) 52.212-4(v) Incorporation by reference
- (9) 52.212-3(b) Annual Representations and Certifications
- (10) 52.212-3(h) Certification Regarding Responsibility Matters
- (11) 52.212-3(l) Taxpayer Identification Number
- (12) 52.204-13, System for Award Management Maintenance

The following provisions and clauses provide the Government certain contract flexibilities for contract award, performance, options, and termination.

- (13) 52.216-27, Single or Multiple Awards
- (14) 52.217-3, Evaluation Exclusive of Options
- (15) 52.217-4, Evaluation of Options Exercised at Time of Contract Award
- (16) 52.217-5, Evaluation of Options
- (17) 52.217-8, Option to Extend Services
- (18) 52.217-9, Option to Extend the Term of the Contract
- (19) 52.212-4(l) Termination for Government's Convenience
- (20) 52.212-4(m) Termination for Cause
- (21) 52.233-3, Protest After Award

The following clauses provide the framework for resolving disputes and claims of breach of contract.

- (22) 52.212-4(d) Disputes
- (23) 52.212-4(s) Order of precedence<sup>15</sup>
- (24) 52.233-4, Applicable Law for Breach of Contract Claim

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<sup>14</sup> Most of the text for GSAR 52.212-4(w) *Commercial supplier agreements unenforceable clauses* is also being retained as part of 52.212-4(k) contained within this class deviation.

<sup>15</sup> The Order of Precedence text included in the class deviation is based on the text included in GSAR 52.212-4 (FAR Deviation).

Finally, the following clauses protect the Government from unnecessary risk:

- (25) 52.212-4(u) Unauthorized Obligations<sup>16</sup>
- (26) 52.212-4(h) Patent Indemnity

**Requirements considered potentially necessary by GSA for achievement of a public policy objective:**

National Security Interests

The following provisions are included for consistency with national security interests.

- (1) 52.212-3(m) Restricted business operations in Sudan
- (2) 52.212-3(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran

Cyber and Supply Chain Security

The following provisions and clauses are included to protect the Government from cyber and supply chain risks.

- (3) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems
- (4) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
- (5) 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment
- (6) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

Other Public Policy Objectives

Finally, the following two clauses are retained to allow for furtherance of public policy objectives:

- (7) 52.212-5(d) Comptroller General Examination of Record
- (8) 52.219-9, Small Business Subcontracting Plan

Specifically, section 846 includes Comptroller General (i.e. GAO) auditing requirements, so the Office of Acquisition Policy decided keeping 52.212-5 is consistent with section 846. Additionally, the Office of Acquisition Policy wants to support GSA's commitment to small business participation and therefore chose to leave 52.219-9 available at the contracting officer's discretion.

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<sup>16</sup> The Unauthorized Obligations text included in the class deviation is based on the text included in GSAR 52.212-4 (FAR Deviation).

## Step 5 - Determination of Deviations to FAR Part 12 Clauses and Provisions

The results of proceeding steps were used to determine to what extent the e-marketplace solicitation and the resulting contracts would be exempt from the 171 baseline requirements normally applicable to the acquisition of commercial services.

In total, 84 requirements were determined to be required and not exempt, 50 requirements are mandated by statute or EO (See Step 3), and 34 requirements were determined to be a basic necessity of federal contracting or necessary for GSA to meet its policy objectives (See Step 4). These solicitation provisions and contract clauses deemed to be necessary for federal contracting or GSA policy goals are required for the e-marketplace provider acquisition, unless existing FAR authorities allow the contracting officer to tailor, or permit the contracting officer to choose not to incorporate, a provision or clause as not applicable. For example—

- FAR 52.212-1(b), Submission of offers, was not exempted per this class deviation, but the contracting officer may still tailor the instructions at FAR 52.212-1(b), in accordance with FAR 12.302, as appropriate for the acquisition.
- FAR 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment, is based in an EO and therefore a mandatory requirement. However, it would only apply to a commercial services acquisition if it involved imaging equipment being delivered, used by a contractor at a Government facility, or furnished by the Government.

Finally, the following 87 requirements are not mandated nor necessary for this acquisition, and furthermore, do not advance an important public policy objective. Therefore, they are exempted by this class deviation.

### Exempted Requirements

- (1) 52.212-1(b) Submission of offerors (first sentence)
- (2) 52.212-1(f) Late submissions, modifications, revisions, etc. (first sentence)
- (3) 52.212-1(l) Debriefing
- (4) 52.212-2(a) Evaluation factors
- (5) 52.212-2(b) Options
- (6) 52.212-3(f) Buy American Certificate
- (7) 52.212-3(g) Buy American Free Trade Agreements Israeli Trade Act Certificate
- (8) 52.212-3(p) Ownership or Control of Offeror
- (9) 52.212-3(r) Predecessor of Offeror
- (10) 52.212-4(a) Inspection/Acceptance
- (11) 52.212-4(b) Assignment
- (12) 52.212-4(i)(1) Items accepted
- (13) 52.212-4(i)(3) Electronic Funds Transfer

- (14) 52.212-4(q) Other compliances
- (15) 52.212-4(r) 18 U.S.C. 431 relating to officials not to benefit
- (16) 52.212-4(r) 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections
- (17) 52.212-4(r) 49 U.S.C. 40118, Fly American
- (18) 52.203-6, Restrictions on Subcontractor Sales to the Government
- (19) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009
- (20) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards
- (21) 52.204-14, Service Contract Reporting Requirements
- (22) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts
- (23) 52.207-6, Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts)
- (24) 52.209-7, Information Regarding Responsibility Matters
- (25) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters
- (26) 52.216-28, Multiple Awards for Advisory and Assistance Services
- (27) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award
- (28) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns
- (29) 52.219-6, Notice of Total Small Business Set-Aside
- (30) 52.219-7, Notice of Partial Small Business Set-Aside
- (31) 52.219-8, Utilization of Small Business Concerns
- (32) 52.219-13, Notice of Set-Aside of Orders
- (33) 52.219-14, Limitations on Subcontracting
- (34) 52.219-16, Liquidated Damages—Subcontracting Plan
- (35) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside
- (36) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns
- (37) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program
- (38) 52.222-35, Equal Opportunity for Veterans
- (39) 52.222-36, Equal Opportunity for Workers with Disabilities
- (40) 52.222-37, Employment Reports on Veterans
- (41) 52.222-41, Service Contract Labor Standards
- (42) 52.222-42, Statement of Equivalent Rates for Federal Hires
- (43) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)
- (44) 52.222-44, Fair Labor Standards Act and Service Contract Labor

- Standards—Price Adjustment
- (45) 52.223-1, Biobased Product Certification
  - (46) 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts
  - (47) 52.223-4, Recovered Material Certification
  - (48) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items
  - (49) 52.223-15, Energy Efficiency in Energy-Consuming Products
  - (50) 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts
  - (51) 52.225-1, Buy American—Supplies
  - (52) 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act
  - (53) 52.225-5, Trade Agreements
  - (54) 52.225-26, Contractors Performing Private Security Functions Outside the United States
  - (55) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations
  - (56) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management
  - (57) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management
  - (58) 52.232-36, Payment by Third Party
  - (59) 52.242-5, Payments to Small Business Subcontractors
  - (60) 52.212-1(d) Product samples
  - (61) 52.212-1(e) Multiple offers
  - (62) 52.212-1(h) Multiple awards
  - (63) 52.212-1(i) Availability of requirements documents
  - (64) 52.212-3(j) Place of manufacture
  - (65) 52.212-3(k) Certificates regarding exemptions from the application of the Service Contract labor Standards
  - (66) 52.212-4(c) Changes
  - (67) 52.212-4(f) Excusable delays
  - (68) 52.212-4(g) Invoice
  - (69) 52.212-4(j) Risk of loss
  - (70) 52.212-4(k) Taxes
  - (71) 52.212-4(n) Title
  - (72) 52.212-4(o) Warranty
  - (73) 52.212-4(p) Limitation of liability
  - (74) 52.204-16, Commercial and Government Entity Code Reporting
  - (75) 52.204-18, Commercial and Government Entity Code Maintenance
  - (76) 52.216-18, Ordering
  - (77) 52.216-19, Order Limitations
  - (78) 52.216-20, Definite Quantity
  - (79) 52.216-21, Requirements
  - (80) 52.216-22, Indefinite Quantity

- (81) 52.217-3, Evaluation Exclusive of Options
- (82) 52.217-6, Option for Increased Quantity
- (83) 52.217-7, Option for Increased Quantity—Separately Priced Line Item
- (84) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements
- (85) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements
- (86) 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States
- (87) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors



Class Deviation CD-2019-12  
Implementation Guidance

December 18, 2019

MEMORANDUM FOR BETH FOLZ  
DEPUTY ASSISTANT COMMISSIONER  
OFFICE OF GENERAL SUPPLIES AND SERVICES (QS)

CC: LAURA J. STANTON  
DEPUTY ASSISTANT COMMISSIONER FOR  
CATEGORY MANAGEMENT  
OFFICE OF INFORMATION TECHNOLOGY CATEGORY (QT3)

FROM: JEFFREY A. KOSES      JEFFREY KOSES      Digitally signed by  
SENIOR PROCUREMENT EXECUTIVE      Date: 2019.12.19  
OFFICE OF ACQUISITION POLICY (MV)      08:44:05 -05'00'

SUBJECT: Usage of Clauses and Provisions Exempted by Class Deviation  
CD-2019-12, FAR and GSAR Class Deviation—e-Marketplace  
Provider Acquisition for the Commercial e-Commerce Portals

**1. Purpose.**

This memorandum clarifies the clauses and provisions exempted by Class Deviation CD-2019-12 may be used for the e-marketplace provider acquisition following consultation with the Office of Acquisition Policy.

**2. Background.**

Class Deviation CD-2019-12 exempted the e-marketplace portal provider acquisition from 87 requirements normally applicable to a commercial items contract in accordance with the Federal Acquisition Regulation (FAR) and the General Services Administration Acquisition Regulation (GSAR). In other words, those 87 requirements, listed in *Step 5 - Determination of Deviations to FAR Part 12 Clauses and Provisions* within Attachment C of the class deviation (page 65), are not required for the e-marketplace portal provider acquisition.

However, the Office of Acquisition Policy recognizes there may be circumstances where a certain requirement exempted by the class deviation would be appropriate for the e-marketplace portal provider acquisition. For example, the Office of Acquisition Policy

recently advised the acquisition team to add the *Changes* clause at FAR 52.212-4, *Contract Terms and Conditions—Commercial Items*, to the e-marketplace portal provider solicitation, which was previously exempted by the class deviation.

### **3. Consultation.**

The Office of Acquisition Policy may be consulted by email through its General Services Acquisition Policy Division at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov).