



U.S. Department  
of Transportation

**Federal Highway  
Administration**

**REQUEST FOR QUOTATION (RFQ)**

**Issuing Office:** United States Department of Transportation  
Federal Highway Administration (FHWA)  
Western Federal Lands Highway Division  
610 E Fifth Street  
Vancouver, WA 98661-3801

**Agency Contact:** Doug Taylor, Contract Specialist, (360) 619-7738  
Email: [WFL.Purchasing@dot.gov](mailto:WFL.Purchasing@dot.gov)

**Solicitation Number:** 69056724Q000008

**Title:** SOLE SOURCE Remote Video Conference Deposition  
Reporting and Transcript Services

**Solicitation Release Date:** 12/08/2023

**Technical Questions Due Date:** Friday, 12/15/2023, at 2:00pm PT

**Quotation Due Date:** **Tuesday, 12/19/2023, at 2:00pm PT**

**SECTION A – RFQ INFORMATION AND  
INSTRUCTIONS FOR PREPARATION OF QUOTATIONS**

**1. RFQ INFORMATION**

This combined synopsis/solicitation is prepared in accordance with Federal Acquisition Regulation (FAR) Subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; quotes are being requested and a written solicitation will not be issued.

This is an OPEN-MARKET Firm Fixed Price (FFP) RFQ. This solicitation is prepared in accordance with Federal Acquisition Regulation (FAR) Part 12, Acquisition of Commercial Items, in conjunction with the policies and procedures for solicitation, evaluation, and award as prescribed in FAR 13, Simplified Acquisition Procedures.

The North American Industry Classification System (NAICS) code is 561492 with an industry size standard of \$16.5 million and the associated Product Service Code (PSC) is R606. The solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular (FAC) 2023-06 effective 12/04/2023.

The proposed contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source, Naegeli Reporting Corporation, 111 SW Fifth Avenue, Suite 2020, Portland, OR 97204, under the authority of FAR 13.106-1(b)(1)(i). Naegeli Reporting Corporation is the only company that can provide the necessary remote video conference deposition reporting and transcript services that WFLHD requires.

All responsible offerors may submit a quote that will be reviewed by the Government. However, a determination by the Government not to compete with this proposed contract based upon responses to this solicitation is solely within the discretion of the Government. Information received will normally be considered for the sole purpose of determining whether to conduct a competitive procurement.

A responsible quoter is one whose quotation conforms to the solicitation and will be most advantageous to the Government. It is the contractor's responsibility to be familiar with applicable clauses and provisions. FAR Provisions and Clauses may be viewed and/or downloaded from <https://www.acquisition.gov/?q=browsefar>.

It is the responsibility of all interested vendors to check <https://highways.dot.gov/federal-lands/business/simplified-acquisitions> for any Amendments or Question and Answer documentation which shall be incorporated into your response accordingly.

**All contractors are reminded that, in accordance with FAR 52.204-7, System for Award Management (SAM), they must be registered and active in the [www.SAM.gov](http://www.SAM.gov) database PRIOR to submission of a quote or offer.**

All questions concerning this RFQ shall be submitted electronically to [WFL.Purchasing@dot.gov](mailto:WFL.Purchasing@dot.gov), no later than the due date and time on page 1 of this RFQ.

Each prospective Quoter should attempt to state each question in such a way that the Quoter would have no objection to the Government publishing that precise question (and its answer) in a formal amendment to the RFQ. Additionally, each prospective Quoter should attempt to word each question in such a way that the publication of that question (and its answer) would not divulge any information that the prospective Quoter considers to be proprietary or confidential.

## 2. INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF QUOTATIONS

In responding to this RFQ, the Contractor shall address an understanding of logistics, schedule, and any other miscellaneous issues of which the Government should be aware. The Contractor shall indicate if any technical assumptions have been made, conditions have been stipulated or exceptions have been taken with the Government Description of Requirement as written. If technical assumptions are not noted, it will be assumed that the vendor's quote reflects no technical assumptions for the award and agrees to comply with all of the terms and conditions set forth herein.

Quotations shall be submitted electronically as Adobe (.pdf) files to [WFL.Purchasing@dot.gov](mailto:WFL.Purchasing@dot.gov) in an email whose size shall not exceed twenty Megabytes (20MB) no later than the due date and time on page 1 of this RFQ. If multiple emails are required, they shall be identified in sequence (1 of 3, 2 of 3, etc.). Document(s) shall *not* contain any security restrictions (e.g. password protection) that prevent the Government from distributing and printing the document(s) and shall *not* include marketing materials or letters of support/recommendation.

Quotations submitted shall be valid for a period of no less than thirty (30) days from the closing date of the RFQ.

Offerors shall not be reimbursed for the costs of developing a quote for this RFQ.

In responding to this RFQ, the quotation MUST include the following:

### A. Technical/Price Quote

- i. Price quote utilizing the Schedule of Services table in Section B **-or-** the same information on a similar, vendor-generated price quote sheet which includes your Unique Entity Identifier (UEI SAM).
- ii. A statement ***on the quote*** that the offeror has completed the annual representations and certifications electronically in [www.SAM.gov](http://www.SAM.gov) and that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications-Commercial Items, are current, accurate, complete, and applicable to this solicitation (including the business size standard(s) applicable to the NAICS code(s) referenced for this solicitation), at the time this offer is submitted **-or-** a digital copy of the vendor's FAR Report from SAM.gov

iii. A completed copy of the Representation and Certifications at TAR 1252.237-71 (see page D-4); and

iv. Acknowledgement of all solicitation amendments, if any.

**B. Evaluation of Quotation:** The Government will evaluate the quotation and make an award based on the quotation being determined to be fair and reasonable. A verification of past performance will be completed.

**SECTION B – SCHEDULE OF SERVICES**

The Contractor shall furnish all supplies/services to perform the tasks described under this Delivery/Task Order in support of the mission of the FHWA.

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>EST. QTY</b>	<b>UNIT PRICE</b>	<b>TOTAL PRICE</b>
00101	Remote Videoconference for Deposition with Pre-Deposition Performance Testing	24 HR	\$	\$
00201	Remote Videographer	24 HR	\$	\$
00301	Deposition Appearance	24 HR	\$	\$
00401	Deposition Transcript (Original/Word Index/Condensed)	1200 PG	\$	\$
00501	Black/White Exhibits	500 PG	\$	\$
00601	Color Exhibits	500 PG	\$	\$
00701	Read and Sign (Letter/Correction/Declaration)	4 EA	\$	\$
00801	E-Technology Transcript Package	4 EA	\$	\$
<b>GRAND TOTAL</b>				<b>\$</b>

**Note:** As judicial action dictates the need to increase/decrease workload, the best estimate quantities/amounts may be modified to increase or decrease the level of effort. The Government will establish a ceiling price based on the quoted firm-fixed unit prices and an estimate of the total work required which the contractor exceeds at its own risk. The Government will be billed for actual quantities and work not provided or performed will not be compensated.

Unique Entity Identifier (UEI): \_\_\_\_\_

## SECTION C – STATEMENT OF WORK

### 1. BACKGROUND

Western Federal Lands Highway Division (WFLHD), a division of the US Department of Transportation – Federal Highway Administration, designs and administers, primarily, road construction projects on Federal Lands in the states of Alaska, Washington, Oregon, Idaho, Montana, and Wyoming. The type of construction is generally 2-lane roads or highways either accessing Federal lands or within Federal lands.

### 2. OBJECTIVE

The objective of this requirement is to support WFLHD operations by obtaining remote video conferencing and court reporting services in support of litigation under CBCA 7770 for the OR BLM SAL 040727(1) Nestucca River Back Country Byway, Phase 1 project.

### 3. DESCRIPTION OF REQUIREMENT

The contractor shall provide the following services and deliverables for each scheduled deposition:

- Remote Videoconferencing with performance test for all participants prior to the scheduled deposition and virtual breakout rooms made available for each party during the depositions
- Remote Videographer
- Deposition Reporter
- E-Technology Transcript Package to include:
  - Deposition Transcript (Original / Word Index / Condensed)
  - Black/White Exhibits (Photocopy/Scan/Hyperlink)
  - Color Exhibits (Photocopy/Scan/Hyperlink)
  - Read and Sign (Letter/Correction/Declaration)
  - Synchronized Video Transcript for Discovery Video
  - Media DVD

### 4. DELIVERABLES SCHEDULE

The following information applies to all depositions:

- **Project Number and Project Name:** OR BLM SAL 040727(1) Nestucca River Back Country Byway, Phase 1
- **Appeal docketed as:** CBCA 7770
- **Appellant:** Laskey-Clifton Corporation
- **Counsel for Appellant:** Sokol Larkin LLC

It is currently anticipated that three (3) depositions will be held between January 22, 2024 and February 9, 2024, and the fourth deposition will be held in May 2024.

The final deposition dates and times will be provided no less than fourteen (14) days prior to the scheduled deposition.

The Contractor shall ensure that E-Technology Transcript packages for each scheduled deposition are delivered via email to the TPOC no more than fourteen (14) days after each deposition is completed.

## **5. REQUIREMENTS FOR IMPLEMENTING SECTION 508 STANDARDS**

NOTE: The following applies to all FHWA contracts and assistance agreements containing Information and Communication Technology (ICT) as a deliverable.

In addition to the work requirements specified in this statement of work, the Contractor shall ensure that all ICT deliverables meet the requirements of Section 508 of the Rehabilitation Act and the ICT Final Standards and Guidelines (508 Refresh) at 36 CFR Part 1194.

As defined in the 508 Refresh, at 36 CFR Part 1194, Appendix A, E103.4, ICT is “Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content.

Examples of ICT include but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and, electronic documents.”

Section 508 requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments.

Applicable Standards:

- [Appendix A to Part 1194 – Section 508 of the Rehabilitation Act: Application and Scoping Requirements](#)
- [Appendix B to Part 1194 – Section 255 of the Communications Act: Application and Scoping Requirements](#)
- [Appendix C to Part 1194 – Functional Performance Criteria and Technical Requirements](#)

Section 508 Refresh standards are available at <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh>.

The Contractor shall adhere to the terms and requirements in [FHWA Form 4260 Section 508 Information and Communication Technology \(ICT\) Conformance Criteria](#) for Section 508 conformance. The Conformance Criteria document does not need to be completed when submitting a deliverable.

## **6. PERFORMANCE SCHEDULE**

It is anticipated that all requirements under this order shall be accomplished no later than June 30, 2024.

## **7. NON-PERSONAL SERVICES**

This order is a non-personal service as defined in FAR subpart 37.101. It is understood and agreed that the Contractor and/or Contractor's employees and subcontractors:

- A.** Shall perform the services specified herein as independent contractors, not as employees of the government;
- B.** Shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, or financial requirements or constraints attendant to the performance of this contract;
- C.** Shall be free from supervision or control by any government employee with respect to the manner or method of performance of the services specified; but
- D.** Shall, pursuant to the government's right and obligation to inspect, accept or reject the work, comply with such general direction of the Contracting Officer, or the duly authorized representative of the Contracting Officer, as is necessary to ensure the accomplishment of the contract objectives.

## **8. INSPECTION AND ACCEPTANCE**

All supplies and/or work hereunder shall be subject to review by the Government. The Technical Point of Contact (TPOC) is responsible for the inspection and acceptance of all incoming shipments, documents, and services. Acceptance of the final deliverables shall be made in writing by the TPOC.

## **9. AUTHORITY TO OBLIGATE THE GOVERNMENT**

The Contracting Officer is the only individual who can legally commit or obligate the Government to the expenditure of public funds. No cost chargeable to the proposed task order can be incurred before receipt of a fully executed task order or specific authorization from the Contracting Officer.

## **10. PAYMENT FOR UNAUTHORIZED WORK**

No payments will be made for any unauthorized supplies and/or services or for any unauthorized changes to the work specified herein. This includes any services performed by the Contractor of their own volition or at the request of an individual other than a duly appointed Contracting Officer. Only a duly appointed Contracting Officer is authorized to change the specifications, terms, and conditions under this effort.



## **11. CONTRACTOR'S FAILURE TO PERFORM REQUIRED SERVICES**

The rights of the Government and remedies described in this section are in addition to all other rights and remedies set forth in the contract. Specifically, the Government reserves its rights under the appropriate Inspection of Services and Termination Clauses. Any reductions in the Contractor's invoice shall reflect the contract's reduced value resulting from the Contractor's failure to perform required services. The Contractor shall not be relieved of the full performance of the services hereunder and may be terminated for default based upon the inadequate performance of services, even if a reduction was previously taken for any inadequate performance.

## **12. CLOSEOUT OF CONTRACT FILES**

The Government will initiate the administrative closeout of the Delivery Order after receiving evidence that all technical requirements have been completed. The Contractor shall furnish all required documents in support of the closeout of this contract.

The Government anticipates the timeframe to complete the administrative close out of this contract will not exceed forty-five (45) days. The costs incurred in the administrative closeout of task orders and contract files are unallowable direct costs under the contract and, therefore, cannot be charged as direct costs to the Government. Contractors are to handle such costs in accordance with their disclosure statements/cost accounting systems.

## **13. LIST OF ATTACHMENTS**

Attachment 0001 – Service Contract Act Wage Determination (13 pages)

## **SECTION D – SOLICITATION PROVISIONS**

### **Representations, Certifications, and Other Statements of Quoter**

The offeror makes the following representations and certifications as a part of its quote.

#### **Federal Acquisition Regulation (FAR) Provisions**

##### **52.252-1 -- Solicitation Provisions Incorporated by Reference (Feb 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at <https://www.acquisition.gov/far>.

##### **52.203-18 -- Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation (Jan 2017)**

##### **52.204-7 -- System for Award Management (Oct 2018)**

##### **52.204-16 -- Commercial and Government Entity Code Reporting (Oct 2018)**

##### **52.204-22 -- Alternative Line Item Proposal (Jan 2017)**

##### **52.204-29 -- Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures (Dec 2023)**

##### **52.212-1 -- Instructions to Offerors—Commercial Products and Commercial Services (Sep 2023)**

##### **52.212-3 -- Offeror Representations and Certifications—Commercial Products and Commercial Services (Nov 2023)**

(End of provision)

##### **52.204-24 -- Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)**

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) Definitions. As used in this provision—

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(d) Representation. The Offeror represents that—

(1) It [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It [ ] does, [ ] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

## **52.204-26 -- Covered Telecommunications Equipment or Services-Representation (Oct 2020)**

(a) *Definitions.* As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) ( <https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c)(1) *Representation.* The Offeror represents that it [ ] does, [ ] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instruments.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it [ ] does, [ ] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of provision)

## **Transportation Acquisition Regulation (TAR) Provisions**

### **1252.237-71 -- Certification of Data (Nov 2022)**

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (e.g., company profile; qualifications; background statements; brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to:

- (1) prosecution for false statements pursuant to 18 U.S.C. 1001; and/or
- (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801– 3812 and 49 CFR part 31; and/or
- (3) termination for default or for cause under any contract resulting from its offer; and/or
- (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors and submit such certification(s) with its offer.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Typed Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. 1001.

(End of provision)

## SECTION E – CONTRACT CLAUSES

### Federal Acquisition Regulation (FAR) Clauses

#### **52.252-2 -- Clauses Incorporated by Reference (Feb 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at <https://www.acquisitions.gov/?q=browsefar>

#### **52.203-17 -- Contractor Employee Whistleblower Rights (Nov 2023)**

#### **52.204-13 -- System for Award Management Maintenance (Oct 2018)**

#### **52.204-18 -- Commercial and Government Entity Code Maintenance (Jul 2016)**

#### **52.204-19 -- Incorporation by Reference of Representations and Certifications (Dec 2014)**

#### **52.204-21 -- Basic Safeguarding of Covered Contractor Information Systems (Nov 2021)**

#### **52.212-4 -- Contract Terms and Conditions – Commercial Products and Commercial Services (Nov 2023)**

#### **52.232-39 -- Unenforceability of Unauthorized Obligations (Jun 2013)**

#### **52.232-40 -- Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)**

(End of clause)

#### **52.212-5 -- Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services (Dec 2023)**

(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 products and commercial services:

(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 Covered Entities (DEC 2023) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

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

(5) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) ( 31 U.S.C. 3903 and 10 U.S.C. 3801).

(6) 52.233-3, Protest After Award (Aug 1996) ( 31 U.S.C. 3553).

(7) 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 products and commercial services:

[Contracting Officer check as appropriate.]

\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jun 2020), with Alternate I (Nov 2021) ( 41 U.S.C. 4704 and 10 U.S.C. 4655).

\_\_\_ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509)).

\_\_\_ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

X (4) 52.203-17, Contractor Employee Whistleblower Rights (Nov 2023) ( 41 U.S.C. 4712); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR 3.900(a).

\_\_\_ (5) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020) (Pub. L. 109-282) ( 31 U.S.C. 6101 note).

\_\_\_ (6) [Reserved].

\_\_\_ (7) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_ (8) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

X (9) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

\_\_\_ (10) 52.204–28, Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts. (Dec 2023) (Pub. L. 115–390, title II).

\_\_\_ (11)(i) 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (Dec 2023) (Pub. L. 115–390, title II).

\_\_\_ (ii) Alternate I (Dec 2023) of 52.204–30.

\_\_\_ (12) 52.209-6, Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Nov 2021) ( 31 U.S.C. 6101 note).

\_\_\_ (13) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) ( 41 U.S.C. 2313).

\_\_\_ (14) [Reserved].

\_\_\_ (15) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Oct 2022) ( 15 U.S.C. 657a).

\_\_\_ (16) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) ( 15 U.S.C. 657a).

\_\_\_ (17) [Reserved]

X (18) (i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2020) ( 15 U.S.C. 644).



- \_\_\_ (ii) Alternate I (Mar 2020) of 52.219-6.
- \_\_\_ (19) (i) 52.219-7, Notice of Partial Small Business Set-Aside (Nov 2020) ( 15 U.S.C. 644).
- \_\_\_ (ii) Alternate I (Mar 2020) of 52.219-7.
- \_\_\_ (20) 52.219-8, Utilization of Small Business Concerns (Sep 2023) ( 15 U.S.C. 637(d)(2) and (3)).
- \_\_\_ (21) (i) 52.219-9, Small Business Subcontracting Plan (Sep 2023) ( 15 U.S.C. 637(d)(4)).
- \_\_\_ (ii) Alternate I (Nov 2016) of 52.219-9.
- \_\_\_ (iii) Alternate II (Nov 2016) of 52.219-9.
- \_\_\_ (iv) Alternate III (Jun 2020) of 52.219-9.
- \_\_\_ (v) Alternate IV (Sep 2023) of 52.219-9.
- \_\_\_ (22) (i) 52.219-13, Notice of Set-Aside of Orders (Mar 2020) ( 15 U.S.C. 644(r)).
- \_\_\_ (ii) Alternate I (Mar 2020) of 52.219-13.
- \_\_\_ (23) 52.219-14, Limitations on Subcontracting (Oct 2022) ( 15 U.S.C. 637s).
- \_\_\_ (24) 52.219-16, Liquidated Damages—Subcontracting Plan (Sep 2021) ( 15 U.S.C. 637(d)(4)(F)(i)).
- \_\_\_ (25) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Oct 2022) ( 15 U.S.C. 657f).
- X (26) (i) 52.219-28, Post Award Small Business Program Rerepresentation (Sep 2023)( 15 U.S.C. 632(a)(2)).
- \_\_\_ (ii) Alternate I (Mar 2020) of 52.219-28.
- \_\_\_ (27) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Oct 2022) ( 15 U.S.C. 637(m)).
- \_\_\_ (28) 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 (Oct 2022) ( 15 U.S.C. 637(m)).
- \_\_\_ (29) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) ( 15 U.S.C. 644(r)).
- \_\_\_ (30) 52.219-33, Nonmanufacturer Rule (Sep 2021) ( 15U.S.C. 637(a)(17)).
- X (31) 52.222-3, Convict Labor (Jun 2003) (E.O.11755).
- \_\_\_ (32) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Nov 2023).
- X (33) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- X (34) (i) 52.222-26, Equal Opportunity (Sep 2016) (E.O.11246).
- \_\_\_ (ii) Alternate I (Feb 1999) of 52.222-26.
- \_\_\_ (35) (i) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).
- \_\_\_ (ii) Alternate I (Jul 2014) of 52.222-35.
- X (36) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).
- \_\_\_ (ii) Alternate I (Jul 2014) of 52.222-36.
- \_\_\_ (37) 52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C. 4212).
- \_\_\_ (38) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- X (39) (i) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 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).

\_\_\_ (40) 52.222-54, Employment Eligibility Verification (May 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

\_\_\_ (41) (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.)

\_\_\_ (42) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

\_\_\_ (43) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

\_\_\_ (44) (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.

\_\_\_ (45) (i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (Jun2014) of 52.223-14.

\_\_\_ (46) 52.223-15, Energy Efficiency in Energy-Consuming Products (May 2020) ( 42 U.S.C. 8259b).

\_\_\_ (47) (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.

**X** (48) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020) (E.O. 13513).

\_\_\_ (49) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

\_\_\_ (50) 52.223-21, Foams (Jun2016) (E.O. 13693).

\_\_\_ (51) (i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a).

\_\_\_ (ii) Alternate I (Jan 2017) of 52.224-3.

\_\_\_ (52) (i) 52.225-1, Buy American-Supplies (Oct 2022) ( 41 U.S.C. chapter 83).

\_\_\_ (ii) Alternate I (Oct 2022) of 52.225-1.

\_\_\_ (53) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (NOV 2023) ( 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 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 [Reserved].

\_\_\_ (iii) Alternate II (Dec 2022) of 52.225-3.

\_\_\_ (iv) Alternate III (NOV 2023) of 52.225-3.

\_\_\_ (v) Alternate IV (Oct 2022) of 52.225-3.

\_\_\_ (54) 52.225-5, Trade Agreements (NOV 2023) ( 19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

**X** (55) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (56) 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. Subtitle A, Part V, Subpart G Note).

\_\_\_ (57) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ( 42 U.S.C. 5150).

\_\_\_ (58) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ( 42 U.S.C. 5150).

\_\_\_ (59) 52.229-12, Tax on Certain Foreign Procurements (Feb 2021).

\_\_\_ (60) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (Nov 2021) ( 41 U.S.C. 4505, 10 U.S.C. 3805).

\_\_\_ (61) 52.232-30, Installment Payments for Commercial Products and Commercial Services (Nov 2021) ( 41 U.S.C. 4505, 10 U.S.C. 3805).

X (62) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct2018) ( 31 U.S.C. 3332).

\_\_\_ (63) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ( 31 U.S.C. 3332).

\_\_\_ (64) 52.232-36, Payment by Third Party (May 2014) ( 31 U.S.C. 3332).

\_\_\_ (65) 52.239-1, Privacy or Security Safeguards (Aug 1996) ( 5 U.S.C. 552a).

\_\_\_ (66) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) ( 15 U.S.C. 637(d)(13)).

X (67) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

\_\_\_ (iii) Alternate II (Nov 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]

X (1) 52.222-41, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter67).

X (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ( 29U.S.C.206 and 41 U.S.C. chapter 67).

\_\_\_ (5) 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).

\_\_\_ (6) 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).

X (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

X (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

   (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 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, as defined in FAR 2.101, on the date of award of this contract, 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 products or commercial services. 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 (Nov 2021) ( 41 U.S.C. 3509).

(ii) 52.203-17, Contractor Employee Whistleblower Rights (Nov 2023) ( 41 U.S.C. 4712).

(iii) 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)).

(iv) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (Dec 2023) (Section 1634 of Pub. L. 115-91).

(v) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vi) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).

- (vii)(A) 52.204–30, Federal Acquisition Supply Chain Security Act Orders— Prohibition. (Dec 2023) ([Pub. L. 115–390](#), title II).
- (B) Alternate I (Dec 2023) of 52.204–30.
- (viii) 52.219-8, Utilization of Small Business Concerns (Sep 2023) ( 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 the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (ix) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (x) 52.222-26, Equal Opportunity (Sep 2015) (E.O.11246).
- (xi) 52.222-35, Equal Opportunity for Veterans (Jun 2020) ( 38 U.S.C. 4212).
- (xii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) ( 29 U.S.C. 793).
- (xiii) 52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C. 4212).
- (xiv) 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.
- (xv) 52.222-41, Service Contract Labor Standards (Aug 2018) ( 41 U.S.C. chapter 67).
- (xvi) (A) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 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).
- (xvii) 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).
- (xviii) 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).
- (xix) 52.222-54, Employment Eligibility Verification (May 2022) (E.O. 12989).
- (xx) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).
- (xxi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).
- (xxii) (A) 52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a).
- (B) Alternate I (Jan 2017) of 52.224-3.
- (xxiii) 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. Subtitle A, Part V, Subpart G Note).
- (xxiv) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xxv) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) ( 31 U.S.C. 3903 and 10 U.S.C. 3801). Flow down required in accordance with paragraph (c) of 52.232-40.
- (xxvi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( 46 U.S.C. 55305 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 products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

### **52.217-8 Option to Extend Services (Nov 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the purchase order period.

(End of clause)

### **Transportation Acquisition Regulation (TAR) clauses**

The following Transportation Acquisition Regulation clauses are incorporated by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at <https://www.transportation.gov/assistant-secretary-administration/procurement/tar-part-1252-solicitations-provisions-and-contract>

**1252.242-71 -- Contractor Testimony (Nov 2022)**

**1252.242-72 -- Dissemination of Contract Information (Nov 2022)**

(End of clause)

### **FHWA Local Clauses**

#### **FHWA-001 -- Payment and Proper Submission of Payment Request(s)**

##### **1. *Payment***

The Government will pay the Contractor for the full performance required under the terms of this Order. The ceiling price of the Order is an estimate of the total work required to complete the project tasks. The Contractor will be paid for actual work and/or supplies received. Work and/or supplies not received will not be compensated.

##### **2. *Proper Submission of Payment Request(s)***

(a) Definitions. As used in this clause—

(1) Contract financing payment has the meaning given in FAR 32.001.

(2) Payment request means a bill, voucher, invoice, or request for contract financing payment or invoice payment with associated supporting documentation. The payment

- request must comply with the requirements identified in FAR 32.905(b), “Content of Invoices,” this clause, and the applicable Payment clause included in this contract.
- (3) Electronic form means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.
  - (4) Invoice payment has the meaning given in FAR 32.001.
- (b) Electronic payment requests. Except as provided in paragraph (e) of this clause, the Contractor shall submit payment requests in electronic form. Purchases paid with a Governmentwide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.
- (c) The Department of Transportation utilizes the Delphi e-Invoicing web-portal for processing invoices. For vendors submitting invoices, and certain grantees submitting payment requests, they will be required to submit invoices via Delphi e-Invoicing which is accessed and authenticated via [www.login.gov](http://www.login.gov).
- (d) To receive payment and in accordance with the Prompt Payment Act, all invoices submitted as attachments in the Delphi e-Invoicing web-portal shall contain the following:
- (1) Invoice number and invoice date.
  - (2) Period of performance covered by invoice.
  - (3) Contract number and title.
  - (4) Task/Delivery Order number and title (if applicable).
  - (5) Amount billed (by CLIN), current and cumulative.
  - (6) Total (\$) of billing.
  - (7) Cumulative total billed for all contract work to date.
  - (8) Name, title, phone number, and mailing address of person to be contacted in the event of a defective invoice.

If the contract includes allowances for travel, all invoices which include charges pertaining to travel expenses will catalog a breakdown of reimbursable expenses with the appropriate receipts to substantiate the travel expenses.

- (e) Payment system registration. All persons accessing the Delphi e-Invoicing web-portal will be required to have their own unique user Delphi e-Invoicing ID and password and be credentialed through [login.gov](http://login.gov).
- (1) Electronic authentication. See [www.login.gov](http://www.login.gov) for instructions. Click on the following link for instructions on establishing a login.gov account: <https://login.gov/create-an-account/>.
  - (2) To create a login.gov account, the user will need a valid email address and a working phone number. The user will create a password and then login.gov will reply with an email confirming the email address.

- (3) Vendor POC's who require access to the e-Invoicing web-portal for invoice submission and payment tracking purposes will be required to provide their full name, email address, and current phone number to the agency POC to initiate the Delphi e-Invoicing web-portal account. Vendor users and the agency POC will be notified via e-mail when the account is created. The vendor user will be provided detailed instructions for logging into their Delphi e-Invoicing account. FHWA's agency POC may be contacted at [HCFA-10@dot.gov](mailto:HCFA-10@dot.gov).

If the Vendor has any general questions or issues accessing the iSupplier web-portal, please have them contact the ESC iSupplier helpdesk either at:

- <http://einvoice.esc.gov>
  - Call Delphi Help Desk at 1-866-641-3500, option #4, then option #3
- (4) Training on Delphi. To facilitate use of DELPHI, comprehensive user information is available at <http://einvoice.esc.gov>.
  - (5) Account Management. Vendors are responsible for contacting the Delphi Help Desk when their firm's points of contacts will no longer be submitting invoices so they can be removed from the system. Instructions for contacting the Delphi Help Desk can be found at: <http://einvoice.esc.gov>.
    - To add new points of contacts, Vendors are to submit the name(s), email address(es) and phone number(s) to [HCFA-10@dot.gov](mailto:HCFA-10@dot.gov)

3. *Account Management.* If a user ID becomes inactive/times out due no activity by the POC, the Vendor shall contact [HCFA-10@dot.gov](mailto:HCFA-10@dot.gov) with the full name, title, phone number, e-mail address, and user ID of the POC to be reactivated. To prevent being timed out due to no- activity, users should login once within 45 days of their last login.

4. *Waivers.* The Department of Transportation Financial Management officials may, on a case-by-case basis, waive the requirement to register and use the DELPHI e-Invoicing System. Waiver request forms can be obtained on the DELPHI e-Invoicing website (<https://www.transportation.gov/policy-initiatives/delphi-einvoicing-waiver-request-form>) or by contacting the COR. All Vendors must explain why they are unable to use or access the Internet to register and enter payment requests.

All waiver requests shall be sent via mail to:

Director of the Office of Financial Management  
US Department of Transportation, B-30  
Office of Financial Management, Room W93-431  
1200 New Jersey Avenue SE  
Washington DC 20590-0001

or electronically to: [DOTeInvoicing@dot.gov](mailto:DOTeInvoicing@dot.gov)

The Director of the DOT Office of Financial Management will confirm or deny the request within approximately 30 days.



If a Vendor is granted a Waiver, Requests for Advance or Reimbursement and required supporting documents, shall be sent via regular U.S. Postal Service to the following address:

Federal Highway Administration Invoice Processing  
P.O. Box 268865  
Oklahoma City, OK 73126-8865  
Attention: Douglas Taylor

Invoices submitted via an overnight service must use the following physical address:

MMAC  
FHWA/AMZ-150  
6500 MacArthur Blvd. Oklahoma City, OK 73169  
Attention: (Accounting Technician)

Express Delivery Point of Contact: Lead Account Technician, 405-954-8252

All invoices, regardless of submission method, must identify the Contract Specialist as the invoicing point of contact.

5. *Final Invoices*. For firm-fixed-price (FFP) contracts where supplies are delivered or services are performed, the final invoice is not subject to further contract settlement actions between the Government and the Contractor.

For non-FFP contracts, further contract settlement actions may exist where final invoices are not to be submitted yet until these contract settlement actions are resolved. For these contracts, the Contracting Officer will process final invoices as a routine part of the closeout process. When requested, the Contractor shall submit the final invoice directly to the Contracting Officer/ Contract Specialist along with the final closeout documents. When the final invoice is ready for payment, the Contracting Officer will inform the Contractor that the final invoice can be submitted through the iSupplier system.

(End of clause)

#### **FHWA-002 -- Post-Award Evaluation of Contractor Performance**

(a) Interim and final evaluations of contractor performance may be prepared on this contract in accordance with FAR 42.1502 and TAM 1242.1502. The final performance evaluations will be prepared at the time of completion of work.

(b) The Contractor can elect to review the evaluation and submit additional information or provide a rebuttal statement. The contractor will be permitted 60 calendar days to respond from the date of receipt of the evaluation. The contractor's response is voluntary. If the contractor does not respond within 60 days, the Government will presume that the Contractor has no comment. Any disagreement between the parties regarding an evaluation will be referred to an individual at a level above the Contracting Officer, whose decision is final.

(c) Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions.

The Federal Highway Administration utilizes the Contractor Performance Assessment Reporting System (CPARS) to record and maintain past performance information. CPARS hosts a suite of web-enabled applications that are used to document contractor performance information that is required by Federal Regulations. The CPARS module assesses performance on contracts for Systems, Services, Information Technology, and Operations Support; Architect-Engineer contracts; and Construction contracts. Reference material can be accessed in CPARS.

The registration process requires the Contractor to identify an individual that will serve as a primary contact. This individual will be authorized access to the evaluation for review and comment. In addition, the Contractor is encouraged to identify a secondary contact in the event the primary contact is unavailable to process the evaluation within the required 60-day time period. After the FHWA Focal Point registers the contract in CPARS, the contractor representative will receive a system-generated email notifying him/her that the contract is registered. A system-generated email will also provide the Contractor with a User ID if the person does not already have a CPARS User ID.

After a performance evaluation has been prepared and is ready for comment, the Contractor representative will receive a system-generated email notification that the performance evaluation is electronically available for review and comment. The Contractor representative will receive an automated email whenever an assessment is completed and can subsequently retrieve the completed assessment from CPARS.

Contractors may access evaluations in CPARS for review and comment.

(End of clause)

### **FHWA-003 -- Government Technical Point of Contact (TPOC)**

(a) The Contracting Officer is the only individual authorized to enter into or terminate this contract, modify any term or condition of this contract, waive any requirement of this contract, or accept nonconforming work delivered under this contract.

(b) The Contracting Officer will designate a Government Technical Point of Contact (TPOC) at the time of contract award. The TPOC's responsibilities will include technical monitoring of the Contractor's performance and inspecting and accepting deliveries under the contract. The TPOC will be appointed in writing, at which time ALL the responsibilities of the TPOC will be detailed, and a copy of the appointment memorandum will be furnished to the Contractor. Any changes to the TPOC delegation will be made in writing, either by changes to the existing memorandum or by the issuance of a new appointment memorandum. Copies of any changes will be provided to the Contractor.

(c) The TPOC is not authorized to perform, formally or informally, any of the following actions:

- (1) Promise, award, agree to award, or execute any contract, contract modification, or notice of intent that changes or may change this contract;
- (2) Waive or agree to any modification of the delivery schedule;
- (3) Make any final decision on any contract matter subject to the Disputes Clause;
- (4) Terminate, for any reason, the Contractor's right to proceed, or issue any order causing the Contractor to stop work;
- (5) Obligate in any way, the payment of money by the Government.

(d) The Contractor shall comply with the written or oral direction of the Contracting Officer or authorized representative(s) acting within the scope and authority of the appointment memorandum. The Contractor need not proceed with directions that it considers to have been issued without proper authority. The Contractor shall notify the Contracting Officer in writing, with as much detail as possible, when the TPOC has taken an action or has issued direction (written or oral) that the Contractor considers exceeding the TPOC's appointment, within 3 days of the occurrence. Unless otherwise provided in this contract, the Contractor assumes all costs, risks, liabilities, and consequences of performing any work it is directed to perform that falls within any of the categories defined in paragraph (c) prior to receipt of the Contracting Officer's response issued under paragraph (e) of this clause.

(e) The Contracting Officer shall respond in writing within 30 days to any notice made under paragraph (d) of this clause. A failure of the parties to agree upon the nature of a direction, or upon the contract action to be taken with respect thereto, shall be subject to the provisions of the Disputes clause of this contract.

(f) The Contractor shall provide copies of all correspondence to the Contracting Officer and the TPOC.

(g) Any action(s) taken by the Contractor, in response to any direction given by any person acting on behalf of the Government or any Government official other than the Contracting Officer or the TPOC acting within his or her appointment, shall be at the Contractor's risk.

(End of Clause)