percentage of the work performed prior to the notice of termination, plus actual direct costs that the Contractor can demonstrate have resulted from the termination. The Contractor shall not be paid for any work done after receipt of the termination notice, nor for any costs incurred by the Contractor's suppliers or subcontractors which the Contractor could reasonably have avoided.

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, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it should be determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon final acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

Warranty. Except as expressly set forth elsewhere in this contract and except for the implied warranty of merchantability, there are no warranties express or implied. In no event will the Contractor be liable to the Government for consequential damages resulting from the seller's breach including—

- (a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
- (b) Injury to person or property proximately resulting from any breach of warranty.

Other Compliances. The Contractor agrees to comply with all applicable Federal, State and local laws, executive orders, and regulations thereunder and amendments thereto, including, without limitation, 15 U.S.C 2601 et seq., the Federal Occupational Safety and Health Act of 1970; 42 U.S.C. 7401 et seq., the Clean Air Act; 15 U.S.C. 2601 et seq., the Toxic Substances Control Act; and 33 U.S.C. 1251 et seq., and the Federal Water Pollution Control Act.

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 contracting; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51–58, Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C 40118, Fly American.

Order of Precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (a) addenda to this solicitation or contract; (b) solicitation provisions; (c) contract clauses; (d) Standard Form XXXX; (e) Other documents, exhibits, and attachment; and (f) the specification. (End of Clause)

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

As prescribed in 12.302(b)(4), insert the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items (Date)

- (a) The Contractor agrees to comply with the following 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) 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3)).
- (2) 52.222–3, Convict Labor (E.O. 11755)
- (3) 52.233–3, Protest After Award (31 U.S.C 3553 and 40 U.S.C. 759)
- (b) The Contractor agrees to comply with the following FAR and FIRMR clauses in this paragraph (b) that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:
- (1) 52.203–6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).
- (2) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).
- (3) 52.219–14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).
- (4) 52.222–26, Equal Opportunity (E.O. 11246).
- (5) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012).
- (6) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- (7) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 2012).
- (8) 52.225–3, Buy American Act—Supplies (41 U.S.C. 10).
- (9) 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501–2582).

- (10) 52.225–17, Buy American Act— Supplies Under European Community Sanctions for End Products (E.O. 12849).
- (11) 52.225–18, European Community Sanctions for End Products (E.O. 12849).
- (12) 52.225–19, European Community Sanctions for Services (E.O. 12849).
- (13) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C 10, Pub. L. 103–187).
- (14) 52.247–64, Preference for Privately Owned US Flagged Commercial Vessels (46 U.S.C. 1241).
- (15) 201–39.5202–3, Procurement Authority (FIRMR).
- (c) The Contractor agrees to comply with the following FAR clauses in this paragraph (c), applicable to commercial services, that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:
- (1) 52.222–41, Service Contract Act of 1965, As amended (41 U.S.C. 351, et seq.).
- (2) 52.222–42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- (3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).
- (4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).
- (5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 *et seq.*).
- (d) Notwithstanding the requirements of the clauses in paragraphs (a), (b) or (c) of this clause, the Contractor is not required to include any FAR clause, other than those listed below, in a subcontract for commercial items or commercial components—[list of clauses to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]
 (End of clause)

71. In the list of newly redesignated sections below, for each clause or provision indicated in the left column, remove the reference listed in the middle column and insert the reference listed in the right column:

| Clause/provision | Remove | Insert |
|------------------|-----------|-----------|
| 52.211–1 | 10.011(a) | 11.203(a) |
| 52.211–2 | 10.011(b) | 11.203(b) |
| 52.211–3 | 10.011(c) | 11.203(c) |
| 52.211–4 | 10.011(d) | 11.203(d) |
| 52.211–5 | 10.011(e) | 11.203(e) |
| 52.211-6 | 10.011(f) | 11.203(f) |
| 52.211–7 | 10.011(g) | 11.203(g) |