AMERICAN WATER

SCHEDULE C
FAR/DFARS FLOWDOWN PROVISIONS

AW has been awarded several contracts (the “Prime Contract(s)”) by the Departments of Army and Defense (hereinafter collectively referred to as "Customer”) to provide certain services and deliverables to the Customer at the location(s) of each military installation identified in such Prime Contract(s).

AW and Subcontractor agree that, when providing Subcontractor Services to any of AW’s affiliates that are performing work on property owned and/or controlled by the Customer: i) all relevant terms and conditions of the Prime Contract(s) governing each such property (e.g., military installations) will be deemed to be incorporated by reference into each task order, purchase order, change order and/or statement of work issued under the Subcontract; and ii) Subcontractor will adhere to the FAR/DFARS requirements outlined in this Schedule C of FAR/DFARS Flowdown Provisions (“Schedule”).

If, however, any terms and conditions of the Subcontract conflict with any of the applicable terms of the Prime Contract(s) and/or FAR/DFARS clauses contained in this Schedule, the applicable terms of the Prime Contract(s) and/or the FAR/DFARS clauses shall prevail. If the date or substance of any of the FAR/DFARS clauses in this Schedule is different from the date or substance of the clause actually incorporated in a Prime Contract, the date or substance of the clause incorporated by the Prime Contract shall apply.

1. “Subcontract” means the subcontract for Subcontractor Services between any AW entity(ies) and the Subcontractor.
2. “AW” means the entity(ies) that has entered into the Subcontract with the Subcontractor.
3. “Subcontractor” means the party that is providing Subcontractor Services to AW under the Subcontract.
4. Substitute “AW” for “Government”, “United States”, “Contracting Officer” “Administrative Contracting Officer” or “ACO” and substitute “Subcontractor” for “Contractor” and “Subcontract” for “Contract” throughout this Schedule.
5. Communication/notification required under any of the clauses found in this Schedule from/to the Subcontractor to/from the Contracting Officer shall be made through AW.
6. Substitute “Subcontractor” for “Offeror” and for “Contractor” and substitute “AW within 5 working days” for “the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days” and substitute “Subcontract” for ”contract resulting from this solicitation”.

FEDERAL ACQUISITION REGULATIONS

52.202-1 Definitions (Nov 2013)
52.203-3 Gratuities (Apr 1984) (Notes 1 and 6 apply)
52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)
52.204-10 Reporting Executive Compensation and First-Tier Subcontractor Awards (Jul 2013)
52.209-6 Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013)
52.215-11 Price Reduction for Defective Cost or Pricing Data - Modifications (Aug 2011)
52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications (Oct 2010)
52.219-8 Utilization of Small Business Concerns (May 2014) (Note 1 applies)
(This clause only applies if the Subcontractor is not a small business)
52.222-1 Notice to the Government of Labor Disputes (Feb 1997) (Note 1 applies)
52.222-41 Service Contract Labor Standards (May 2014)
52.222-50 Combating Trafficking in Persons (Feb 2009)
52.222-54 Employment Eligibility Verification (Aug 2013)
52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997) (Applicable if this Subcontract Involves Hazardous Material. Note 1 applies, except for paragraph (f) where Note 3 applies)
52.223-5 Pollution Prevention and Right-to-Know Information, Alternate I (May 2011)
52.223-6 Drug-Free Workplace (May 2001) (Note 1 applies)
52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)
52.228-5 Insurance - Work on a Government Installation (Jan 1997) (Note 1 applies and Note 3 applies to paragraph b)

52.232-40 Providing Accelerated Payments to Small Business Contractors (Dec 2013) (Applies to Small Businesses)
52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Apr 1984) (Note 1 applies)
52.244-6 Subcontracts for Commercial Items (May 2014) (Note 1 applies)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EQUALS OR EXCEEDS $10,000
52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010) (Note 1 applies)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EQUALS OR EXCEEDS $100,000
52.222-35 Equal Opportunity for Veterans (Sep 2010) (Note 1 applies)
52.222-37 Employment Reports on Veterans (Sep 2010) (Note 1 applies)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EQUALS OR EXCEEDS $150,000
52.203-7 Anti-Kickback Procedures (May 2014) (Note 1 applies)
52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)
52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (May 2014) (Note 1 applies where appropriate)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EQUALS OR EXCEEDS $250,000
52.223-99 Ensuring Adequate COVID Safety Protocols for Federal Contractors
52.203-6 Restriction on Subcontractor Sales to the Government (Sep 2006)
52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)
52.215-2 Audit and Records – Negotiation (Oct 2010) (Note 1 applies)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EXCEEDS $650,000
52.219-9 Small Business Subcontracting Plan (Deviation 013 O0014 Aug 2013 _ Alternate II (Aug 2013 Alt II Oct 2001) ($1.5M for construction)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EXCEEDS $700,000
52.215-13 Subcontractor Cost or Pricing Data – Modifications (Oct 2010) (Applicable if not otherwise exempt under FAR)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EXCEEDS $5,000,000
52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010)

THE FOLLOWING FAR CLAUSES APPLY TO THIS CONTRACT IF THE VALUE OF THE CONTRACT EXCEEDS $2,000 for construction within the United States
52.222-6 Construction Wage Rate Requirements (May 2014) (Note 1 applies to paragraph a)
52.222-7 Withholding of Funds (May 2014) (Note 1 applies)
52.222-8 Payrolls and Basic Records (May 2014) (Note 1 applies)
52.222-9 Apprentices and Trainees (July 2005)
52.222-10 Compliance with Copeland Act Requirements (Feb 1988)
52.222-11 Subcontracts (Labor Standards) (May 2014) (Note 1 applies to Paragraph b)
52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014)
52.222-14 Disputes Concerning Labor Standards (Feb 1988)
52.222-15 Certification of Eligibility (May 2014) (Note 1 applies except “Government” shall remain Government in paragraph b)

DEFENSE FEDERAL ACQUISITION REGULATIONS

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Dec 2008)
252.203-7002 Requirements to Inform Employees of Whistleblower Rights (Jan 2009)
252.203-7003 Agency Office of the Inspector General (Dec 2012)
252.203-7004 Display of Fraud Hotline Poster(s) (Dec 2012)
252.204-7000 Disclosure of Information (Aug 2013)
252.204-7012 Safeguarding of Unclassified Controlled Technical Information (Dec 20192016)
252.204-7020 NIST SP 800-171 DoD Assessment Requirements (NOV 2020)
252.209-7004 Subcontracting with Firms that Are Owned or Controlled by the Government of a Terrorist Country (Mar 2014) (Note 1 applies)
252.215-7000 Price Adjustments (Dec 2012)
252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (Aug 2013)
252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Apr 2012)
252.223-7008 Prohibition of Hexavalent Chromium (June 2013)
252.223-7999 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O0009)
252.225-7048 Export-Controlled Items (June 2013)
252.231-7000 Supplemental Cost Principals (Dec 1991)
252.235-7003 Frequency Authorization (Mar 2014)
252.236-7005 Airfield Safety Precautions (Dec 1991)
252.243-7001 Pricing of Contract Modifications (Dec 1991)
252.244-7000 Subcontracts for Commercial Items (June 2013)
252.247-7023 Transportation of Supplies by Sea (Apr 2014)

CERTIFICATIONS AND REPRESENTATIONS

The following clauses contain certifications and representations that are material representations of fact upon which AW will rely in making awards to Subcontractor. By executing the Subcontract or submitting its written offer, or providing oral offers/quotations at the request of AW, Subcontractor certifies to the representations and certifications as set forth in the clauses below, which include but are not limited to the following: 1) for 52.209-5 (Certification Regarding Responsibility Matters (Apr 2010)), Subcontractor certifies that its responses to the questions within this clause are as follows: (a)(1)(i) subsection (A), "**are not**"; (a)(1)(i) subsection (B), "**have not**"; (a)(1)(i) subsection (C), "**are not**"; (a)(1)(i) subsection (D), "**have not**"; and (a)(1)(ii), "**has not**"; and 2) for DFARS 252.209-7993 (Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law – Fiscal Year 2014 Appropriations), Subcontractor certifies that its response to all questions within this clause is "**is not**."

All certifications in this document shall apply whenever these terms and conditions are incorporated by reference in this or any Subcontract, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by AW. Subcontractor shall immediately notify AW of any change in status with regard to any certifications and/or representations.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2007) (Applicable to all contracts exceeding $150,000)

(a) Definitions. As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference it his provision.

(c) *Certification.* The offeror, by signing its offer, hereby 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 its behalf in connection with the awarding of this contract.

(d) *Disclosure.* 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.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, for each such failure.

(End of Provision)

52.209-5 Certification Regarding Responsibility Matters (Apr 2010)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ❑ are not [X] presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal Agency;

(B) Have ❑ have not [X] 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 public (Federal, State, or local) 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 (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation);

(C) Are ❑ are not [X] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have ❑ have not [X] within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) 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.

(ii) 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.

(2) Examples.

(i) 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.

(ii) 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 con-testing 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.

(iii) 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.

(iv) 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).

(ii) The Offeror has ❑ has not [X] within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

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 Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

52.222-90 Addressing DEI Discrimination by Federal Contractors.

As prescribed in 22.2203, insert the following clause:

Addressing DEI Discrimination by Federal Contractors (April 2026)

(a) Definitions. As used in this clause— Program participation means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor. Racially discriminatory diversity, equity, and inclusion (DEI) activities means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources.

(b) In connection with the performance of work under this contract, the Contractor agrees as follows:

(1) The Contractor will not engage in any racially discriminatory DEI activities;

(2) The Contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the Contracting Officer, for purposes of ascertaining compliance with this clause;

(3) In the event of the Contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor or subcontractor may be declared ineligible for further Government contracts;

(4) The Contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the Contracting Officer and take any appropriate remedial actions directed by the Contracting Officer; and

(5) The Contractor will inform the Contracting Officer if a subcontractor sues the Contractor and the suit puts at issue, in any way, the validity of this clause.

(6) The Contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of 31 U.S.C. 3729(b)(4). (c) The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier, including those for commercial products and commercial services, except those where the place of delivery or performance is outside the United States.

(End of provision)

DFARS 252.209-7993 – Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction under any Federal Law – Fiscal Year 2014 Appropriations

REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW – FISCAL YEAR 2014 APPROPRIATIONS
(DEVIATION 2014-OO0009) (FEB 2014)

(a) In accordance with sections 8113 and 8114 of the Department of Defense Appropriations Act, 2014, and sections 414 and 415 of the Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2014 (Public Law 113-76, Division C and J), none of the funds made available by those divisions (including Military Construction funds) may be used to enter into a contract with any corporation that –

(1) 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 collection tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or

(2) 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 the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interest of the Government.

(b) The Offeror represents that –

(1) **It is [ ] is not [X]** 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 Subcontract with the authority responsible for collecting the tax liability,

(2) **It is [ ] is not [X]** a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(End of Provision)

252.204-7012 Safeguarding of Unclassified Controlled Technical Information (Dec 2019)

(a) Definitions. As used in this clause—

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.
“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.
“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.
“Covered contractor information system” means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

"Covered defense information" means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at http://www.archives.gov/cui/registry/category-list.html, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

"Cyber incident" means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

"Forensic analysis" means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

"Malicious software" means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

"Media" means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

''Operationally critical support'' means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

"Rapidly report" means within 72 hours of discovery of any cyber incident.

"Technical information" means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at http://dx.doi.org/10.6028/NIST.SP.800-171) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (https://www.fedramp.gov/resources/documents/) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at http://dibnet.dod.mil.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at http://dibnet.dod.mil.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see http://iase.disa.mil/pki/eca/Pages/index.aspx.

(d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph

(c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government’s use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor’s responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause

(End of clause)

252.223-7999 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O0009) (Applicable to all contracts exceeding $250,000)

As prescribed in Class Deviation 2021-O0009, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, use the following clause:

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2021-O0009) (OCT 2021)

(a) *Definition*. As used in this clause –

United States or its outlying areas means—

(1) The fifty States;
(2) The District of Columbia;
(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
(4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
(5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority*. This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the *Federal Register* on September 14, 2021, 86 FR 50985).

(c) *Compliance*. The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at *https:/www.saferfederalworkforce.gov/contractors/*.

(d) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)