



**FAR/DFARS FLOWDOWN PROVISIONS FOR FIXED PRICE PURCHASE ORDERS FOR  
COMMERCIAL ITEMS UNDER A UNITED STATES GOVERNMENT CONTRACT  
ESA-FFP-USG1: Revision June 2017**

The Federal Acquisition Regulation (FAR) and Department of Defense (DOD) FAR Supplement (DFARS) clauses provided in this document are incorporated by reference, modified as indicated, with the same force and effect as if provided in full text. The following words in the FAR and DFARS clauses are to be understood as follows, except (a) in those clauses where the terms should retain their original meaning due to authority vested in the U.S. Government, in which case Buyer retains such rights as are needed to perform this clause under its contract with Buyer's Customer and (b) where the context reasonably requires otherwise:

- "Contract" is the contract between Buyer and Seller as defined in the General Provisions incorporated by reference into the Purchase Order issued by "Buyer."
- "Contractor" and "Offeror" mean Seller.
- "Subcontractor" means Seller's subcontractors.
- "Government" usually means Buyer, but can also mean both the Government and/or Buyer when the context reasonable requires both (e.g., the right to inspect).
- "Contracting Officer" means Buyer's Authorized Representative, except for those specific clauses where the context refers to rights, acts authorizations or obligations that are uniquely performed or granted by the U.S. Government.

The listed clauses that are not applicable due to monetary threshold, place, performance, type of effort or contract shall be treated as self-deleting.

These clauses do not establish privity between Seller and Buyer's Customer. Notwithstanding any provision to the contrary, Seller shall have no right to pursue a claim or any other relief directly against the U.S. Government. The Contract Disputes Act shall not be applicable to the Contract. Any reference to a "Disputes" clause shall mean the Disputes clause of the Contract as set forth in the General Provisions. Any communication or notification required under these clauses to or from Seller to or from the Buyer's Customer shall be made through Buyer.

If the contract between Buyer and Buyer's Customer incorporates a preceding version of any clause, that version shall apply to this Contract. Buyer will provide the applicable dates upon receipt of a written request from Seller.

If Seller is an international contractor, clauses marked with an asterisk (\*) apply to this Contract only if work under the Contract will be performed in the United States or Seller is recruiting employees in the United States to work on the Contract.

**A. PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If Buyer furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information which the U. S. Government owns or has the right to authorize the use of ("Government Furnished Items"), nothing herein shall be construed to mean that Buyer, acting on its own behalf, may modify or limit any rights the Government may have to authorize Seller's use of such Government Furnished Items in support of other U. S. Government prime contracts.



**B. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) INCORPORATED BY REFERENCE**

The following FAR clauses apply to this Contract:

FAR Reference	Title
52.202-1	DEFINITIONS (NOV 2013)
52.203-3	GRATUITIES (APR 1984)
52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (*)
52.222-26	EQUAL OPPORTUNITY (SEP 2016) (*)
52.222-50	COMBATING TRAFFICKING IN PERSONS (MAR 2015)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)
52.236-13	ACCIDENT PREVENTION (NOV 1991)
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2017)

The following FAR clauses apply to this Contract subject to the parenthetical notes:

52.204-2	SECURITY REQUIREMENTS (AUG 1996) (Applies if the Work requires access to classified information.)
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (Applies where SELLER will have physical access to a federally-controlled facility or access to a Federal information system.)
52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (Applies where SELLER has “Federal contract information” residing in or transiting through its information system).
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008) (Applies if a rating is listed on the cover page of this Contract)
52.215-12	SUBCONTRACTOR COST OR PRICING DATA (OCT 2010) (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
52.215-13	SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 2010) (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016) (*) (Applies if SELLER is an other-than-small business concern and Purchase Contract/Subcontract will offer further lower-tier subcontracting opportunities)
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (MAY 2014) (*) (Applies if the Work requires or involves the employment of laborers or mechanics.)
52.222-41	SERVICE CONTRACT LABOR STANDARDS (MAY 2014) (*) (Applies if this Contract is for services subject to the Service Contract Act.)
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) (Applies if this Contract is for services subject to the Service Contract Act.)
52.222-53	EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES-REQUIREMENTS (MAY 2014) (Applies if this Contract is for services subject to the Service Contract Act.)
52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015) (Applies if this Contract is for services subject to the Service Contract Act.)



- 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 2016)  
(Applies if the Work was manufactured with or contains ozone-depleting substances.)
- 52.225-1 BUY AMERICAN ACT – SUPPLIES (MAY 2014)  
(Applies if the Work contains other than domestic components, and is performed for a non-DOD prime contract.)
- 52.225-5 TRADE AGREEMENTS (OCT 2016)  
(Applies if the Work contains other than U.S. made or designated country end products as specified in the clause, and is for a non-DOD prime contract.)
- 52.227-14 RIGHTS IN DATA – GENERAL (MAY 2014)  
(Applies where Work supports non-DOD prime contract)
- 52.227-19 COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007)  
(Applies where SELLER is providing commercial computer software to be delivered to the Government).
- 52.228-3 WORKERS’ COMPENSATION INSURANCE (DEFENSE BASE ACT) (JUL 2014)  
(Applies if Contract is subject to the Defense Base Act)
- 52.228-4 WORKERS COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984)  
(Applies if Contract is subject to the War Hazards Compensation Act)
- 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)  
(Applies if SELLER is a small business concern. This clause does not apply if Buyer does not receive accelerated payments under the prime contract. Not all agencies provide accelerated payments.)
- 52.245-1 GOVERNMENT PROPERTY (ALTERNATE I) (JAN 2017)  
(The following is added as paragraph (n) "SELLER shall provide to Buyer immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with Seller, or (ii) makes a determination that SELLER's property management practices are inadequate, and/or present an undue risk, or that SELLER has failed to take corrective action when required.")
- 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUNE 2003)  
(Applies when air transport of either supplies or personnel will be involved.)
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)  
(Applies when ocean transport of either supplies or personnel will be involved.)

The following FAR clauses apply if this Contract exceeds \$3,500

- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (\*)  
(Applies except for commercial services that are part of the purchase of a commercial-off-the-shelf (“COTS”) item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item.)
- 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

The following FAR clause applies if this Contract exceeds \$10,000

- 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (\*)



The following FAR clause applies if this Contract exceeds \$15,000

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014) (\*)

The following FAR clause applies if this Contract exceeds \$30,000

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2013)  
(SELLER shall report required executive compensation by posting the information to the System for Award Management ("SAM") at [www.sam.gov](http://www.sam.gov). All information posted will be available to the general public.)

The following FAR clause applies if this Contract exceeds \$35,000

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)  
(Applies unless this Contract is for COTS items. Any notices required by SELLER under this clause shall be provided to Buyer.)

The following FAR clauses apply if this Contract exceeds \$150,000

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)  
52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)  
52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2012)  
52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)  
52.215-2 AUDIT AND RECORDS – NEGOTIATION (OCT 2010)  
(Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)  
52.222-17 NONDISPLACEMENT OF QUALIFIED WORKERS (MAY 2014)  
52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (\*)  
52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (\*)  
52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)

The following FAR clauses apply if this Contract exceeds \$700,000

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2017)  
(Does not apply if SELLER is a small business concern)  
52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)  
(Does not apply if SELLER is a small business concern)

The following FAR clauses apply if this Contract exceeds \$750,000

52.214-26 AUDIT AND RECORDS- SEALED BIDDING (OCT 2010)  
52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010)  
52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 2010)  
52.230-4 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES – FOREIGN CONCERNS (OCT 2015)  
(Applies if Vendor is a foreign concern subject to Cost Accounting Standards)



The following FAR clauses apply if this Contract exceeds \$5,500,000

- 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015)  
(Applies if this Contract if the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)
- 52.203-14 DISPLAY OF HOTLINE POSTER(S) (OCT 2015)

**C. PROVISIONS OF THE DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) INCORPORATED BY REFERENCE**

The following DFARS clauses apply to this Contract if Buyer's prime contract is with the Department of Defense:

DFARS Reference	Title
252.203-7002	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)
252.204-7000	DISCLOSURE OF INFORMATION (OCT 2016) (SELLER shall submit all required requests through Buyer)
252.204-7012	SAFEGUARDING OF UNCLASSIFIED CONTROLLED TECHNICAL INFORMATION (OCT 2016) (Reports required under this clause shall be made through Buyer within 72 hours of discovery of any cyber incident).
252.204-7009	LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016)
252.204-7015	DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS (MAY 2016)
252.208-7000	INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991) (Applies if this Contract requires items containing precious metals)
252.211-7003	ITEM IDENTIFICATION AND VALUATION (MAY 2016) (Applies if this Contract requires the Work to contain unique item identification. All reports required to be submitted under this clause shall be submitted to Buyer at a location to be provided; delete paragraph (g) and insert the following in lieu thereof: "(g) Lower-Tier Subcontracts. SELLER shall include this clause, including this paragraph (g), in all lower tier subcontracts issued under this Subcontract for the acquisition of components identified herein as requiring UID.)
252.223-7001	HAZARD WARNING LABELS (DEC 1991) (Applies if this Contract requires the delivery of hazardous materials.)
252.223-7002	SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994) (Applies only if the articles furnished under this Contract contain ammunition or explosives, including liquid and solid propellants.)
252.223-7003	CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES (DEC 1991) (Applies if 252.223-7002 applies to this Contract.)
252.223-7007	SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)



	(Applies if this Contract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to SELLER as Government Furnished Property.)
252.223-7008	PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013)
252.225-7001	BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (DEC 2016) (Applies if the Work contains other than domestic components. Applies in lieu of FAR 52.225-1.)
252.225-7007	PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (SEP 2006) (Applies if SELLER is supplying items on the U.S. Munitions list.)
252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (OCT 2014) (Applies if the Work to be furnished contains specialty metals.)
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2016)
252.225-7021	TRADE AGREEMENTS (DEC 2016) (Applies if the Work contains other than U.S.-made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5.)
252.225-7028	EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003)
252.225-7048	EXPORT-CONTROLLED ITEMS (JUNE 2013)
252.227-7013	RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (FEB 2014) (Applies in lieu of FAR 52.227-14. Applies to the extent specified in DFARS 252.227-7015.)
252.227-7014	RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014) (Applies in lieu of FAR 52.227-14.)
252.227-7015	TECHNICAL DATA - COMMERCIAL ITEMS (FEB 2014)
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (JAN 2011)
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)
252.239-7018	SUPPLY CHAIN RISK (OCT 2015) (Applies if the Work involves the development or delivery of any information technology, whether acquired as a service or as a supply.)
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013)
252.246-7003	NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Contractor shall provide notifications to Buyer and the contracting officer identified to SELLER.)
252.246-7007	CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION and AVOIDANCE SYSTEM (AUG 2016)
252.246-7008	SOURCES OF ELECTRONIC PARTS (OCT 2016) (Applies when SELLER is providing electronic parts or assemblies containing electronic parts, unless SELLER is the original manufacturer).
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA (APR 2014) (Applies in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below \$150,000.)



252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)  
(Applicable if this Contract meets the criteria set forth in paragraph (b) (2) (ii) of the clause.)

The following DFARS clauses apply if this Contract exceeds \$50,000

252.225-7993 PROHIBITION ON PROVIDING FUNDS TO THE ENEMY (DEVIATION 2015-00016)  
(SEP 2015)  
(Applies if Contract will be performed outside the United States)

The following DFARS clause applies if this Contract exceeds \$500,000

252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)  
(Buyer shall have no liability to Seller for any incentive payment under this clause unless and until the Government provides said incentive payment to Buyer)

The following DFARS clauses apply if this Contract exceeds \$700,000

252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION  
(OCT 2015)

#### **E. CERTIFICATIONS AND REPRESENTATIONS**

SELLER acknowledges that Buyer will rely upon SELLER certifications and representations contained in this clause and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to SELLER. By entering into such contract, SELLER republishes the certifications and representations submitted with its written offer, including company profile information, and oral offers/quotations made at the request of Buyer, and SELLER makes those certifications and representations set forth below. SELLER shall immediately notify Buyer of any change of status regarding any certification or representation.

#### **1. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007)**

(Applicable if this Contract exceeds \$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 in this provision.

(c) Certification. SELLER 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. 11

(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, SELLER shall complete and submit, with its offer to Buyer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. SELLER 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, and not more than \$100,000, for each such failure.

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

(a) *Definition.*

“Internal confidentiality agreement or statement,” “subcontract,” and “subcontractor”, as used in this provision, are defined in the clause at 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

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

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

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

## **3. FAR 52.209-5 Certification Regarding Responsibility Matters (OCT 2015)**

(a)(1) SELLER certifies, to the best of its knowledge and belief, that--

(i) SELLER and/or any of its Principals--

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

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a 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;

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

(D) Have not, 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. Sec. 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. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to 12 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. Sec. 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) SELLER has not, 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).

(b) SELLER shall provide immediate written notice to Elbit Systems of America if, at any time prior to contract award, SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) 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 SELLER knowingly rendered an erroneous certification, in addition to other remedies available, Elbit Systems of America may terminate this contract for default.

**4. FAR 52.222-22 Previous Contracts and Compliance Reports (FEB 1999)**

(a) SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (a) SELLER has filed all required compliance reports and (b) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(b) Paragraph (a) applies only to the extent (1) SELLER performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

**5. FAR 52.222-25 Affirmative Action Compliance (APR 1984)**

(a) SELLER represents: (a) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) that in the event such a program does not presently exist, SELLER will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

(b) Paragraph (a) applies only to the extent (1) SELLER performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.