

# EDAR PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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## **PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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### **Subpart 3452.2—Text of Provisions and Clauses**

#### **3452.201-70 Contracting Officer's Representative (COR).**

As prescribed in [3401.670-3](#), insert a clause substantially the same as:

Contracting officer's Representative (COR) (MAR 2011)

(a) The Contracting Officer's Representative (COR) is responsible for the technical aspects of the project, technical liaison with the contractor, and any other responsibilities that are specified in the contract. These responsibilities include inspecting all deliverables, including reports, and recommending acceptance or rejection to the contracting officer.

(b) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes that affect the contract price, terms, or conditions. Any contractor requests for changes shall be submitted in writing directly to the contracting officer or through the COR. No such changes shall be made without the written authorization of the contracting officer.

(c) The COR's name and contact information:

(d) The COR may be changed by the Government at any time, but notification of the change, including the name and address of the successor COR, will be provided to the contractor by the contracting officer in writing.

(End of Clause)

### **3452.202-1 Definitions—Department of Education.**

As prescribed in [3402.201](#), insert the following clause in solicitations and contracts in which the clause at FAR 52.202-1 is required.

Definitions—Department of Education (MAR 2011)

(a) The definitions at FAR 2.101 are appended with those contained in Education Department Acquisition Regulations (EDAR) 3402.101.

(b) The EDAR is available via the Internet at <http://www.ed.gov/policy/fund/reg/clibrary/edar.html>.

(End of Clause)

### **3452.208-71 Printing.**

As prescribed in [3408.870](#), insert the following clause in all solicitations and contracts other than purchase orders:

Printing (MAR 2011)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the duplication of fewer than 5,000 units of any one page, or fewer than 25,000 units in the aggregate of multiple pages, shall not be deemed to be printing. A unit is defined as one side of one sheet, one color only (with black counting as a color), with a maximum image size of 103/4by 141/4inches on a maximum paper size of 11 by 17 inches. Examples of counting the number of units: black plus one additional color on one side of one page counts as two units. Three colors (including black) on two sides of one page count as six units.

(End of Clause)

### **3452.208-72 Paperwork Reduction Act.**

As prescribed in [3408.871](#), insert the following clause in all relevant solicitations and contracts:

Paperwork Reduction Act (MAR 2011)

(a) The Paperwork Reduction Act of 1995 applies to contractors that collect information for use or disclosure by the Federal government. If the contractor will collect information requiring answers to identical questions from 10 or more people, no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Chief Acquisition Officer (CAO) or the CAO's designee within the Department of Education (ED) and the Office of Management and Budget (OMB). Contractors and Contracting Officers' Representatives shall be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and

should seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring CAO and OMB clearance.

(b) The contractor shall obtain the required clearances through the Contracting Officer's Representative before expending any funds or making public contacts for the collection of information described in paragraph (a) of this clause. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for CAO and OMB clearance. Excessive delay caused by the Government that arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of Clause)

### **3452.209-70 Conflict of interest certification.**

As prescribed in [3409.507-1](#), insert the following provision in all solicitations anticipated to result in contract actions for services above the simplified acquisition threshold:

#### Conflict of Interest Certification (MAR 2011)

(a)(1) The contractor, subcontractor, employee, or consultant, by signing the form in this clause, certifies that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest, ( see FAR Subpart 9.5 for organizational conflicts of interest) (or apparent conflict of interest), for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information.* A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules.* A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity.* A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. "Impaired objectivity" includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies or approaches that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or

encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential conflict of interest (or apparent conflict of interest) regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict, including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if "impaired objectivity", or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to \$5000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the contracting officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(f) *Conflict of Interest Certification.*

The offeror, [insert name of offeror], hereby certifies that, to the best of its knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under the contract or task order resulting from Request for Proposal No. [insert number] that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. The offeror further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the Government's satisfaction, such conflict of interest (or apparent conflict of interest).

Offeror's Name \_\_\_\_\_  
RFP/Contract No. \_\_\_\_\_  
Signature \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

(End of Clause)

**3452.209-71 Conflict of interest.**

As prescribed in [3409.507-2](#), insert the following clause in all contracts for services above the simplified acquisition threshold:

Conflict of Interest (MAR 2011)

(a)(1) The contractor, subcontractor, employee, or consultant, has certified that, to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest ( see FAR Subpart 9.5 for organizational conflicts of interest) (or apparent conflict of interest) for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information* —A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules* —A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity* —A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. "Impaired objectivity" includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential conflict (or apparent conflict of interest) of interest regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict (or apparent conflict of interest), including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term “potential conflict” means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if “impaired objectivity”, or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take, after consultation with the contracting officer, to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict (or apparent conflict of interest) after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to \$5,000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the contracting officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(End of Clause)

### **3452.215-70 Release of restricted data.**

As prescribed in [3415.209](#), insert the following provision in solicitations:

Release of Restricted Data (MAR 2011)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215-1(e), Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act (FOIA). The Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under FOIA. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold or deny access to data requested pursuant to FOIA and that the Government's FOIA officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by FOIA;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to FOIA; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under FOIA.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with:

(1) A restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.215-1(e), Restriction on Disclosure and Use of Data, or

(2) A statement taking exceptions to the terms of paragraphs (a) or (b) of this provision.

(End of Provision)

### **3452.216-70 Additional cost principles.**

Insert the following clause in solicitations and contracts as prescribed in [3416.307\(b\)](#):

Additional Cost Principles (MAR 2011)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocations of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of Clause)

### **3452.216-71 Award-Term.**

As prescribed in [3416.470](#), insert a clause substantially the same as the following in all solicitations and contracts where an award-term arrangement is anticipated:

Award-Term (MAR 2011)

(a) The initial [insert initial contract term] contract term or ordering period may be extended or reduced on the basis of contractor performance, resulting in a contract term or an ordering period lasting at least [insert minimum contract term] years from the date of contract award, to a maximum of [insert maximum contract term] years after the date of contract award.

(b) The contractor's performance will be measured against stated standards by the performance monitors, who will report their findings to the Award Term Determining Official (or Board).

(c) Bilateral changes may be made to the award-term plan at any time. If agreement cannot be made within 60 days, the Government reserves the right to make unilateral changes prior to the start of an award-term period.

(d) The contractor will submit a brief written self-evaluation of its performance within X days after the end of the evaluation period. The self-evaluation report shall not exceed seven pages, and it may be considered in the Award Term Review Board's (ATRB's) (or Term Determining Official's) evaluation of the contractor's performance during this period.

(e) The contract term or ordering period may be unilaterally modified to reflect the ATRB's decision. If the contract term or ordering period has one year remaining, the operation of the contract award-term feature will cease and the contract term or ordering period will not extend beyond the maximum term stated in the contract.

(f) Award terms that have not begun may be cancelled (rather than terminated), should the need for the items or services no longer exists. No equitable adjustments to the contract price are applicable, as this is not the same procedure as a termination for convenience.

(g) The decisions made by the ATRB or Term Determining Official may be made unilaterally. Alternate Dispute Resolution procedures shall be utilized when appropriate.

(End of Clause)

### **3452.224-70 Release of information under the Freedom of Information Act.**

As prescribed in [3424.203](#), insert the following clause in solicitations and contracts.

Release of Information Under the Freedom of Information Act (MAR 2011)

By entering into a contract with the Department of Education, the contractor, without regard to proprietary markings, approves the release of the entire contract and all related modifications and task orders including, but not limited to:

- (1) Unit prices, including labor rates;
- (2) Statements of Work/Performance Work Statements generated by the contractor;
- (3) Performance requirements, including incentives, performance standards, quality levels, and service level agreements;
- (4) Reports, deliverables, and work products delivered in performance of the contract (including quality of service, performance against requirements/standards/service level agreements);
- (5) Any and all information, data, software, and related documentation first provided under the contract;

(6) Proposals or portions of proposals incorporated by reference; and

(7) Other terms and conditions.

(End of Clause)

### **3452.224-71 Notice about research activities involving human subjects.**

As prescribed in [3424.170](#), insert the following provision in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97:

#### Notice About Research Activities Involving Human Subjects (MAR 2011)

(a) *Applicable Regulations.* In accordance with Department of Education regulations on the protection of human subjects, title 34, Code of Federal Regulations, part 97 (“the regulations”), the contractor, any subcontractors, and any other entities engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects.

(b) *Definitions.* (1) The regulations define *research* as “a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.” (34 CFR 97.102(d)). If an activity follows a deliberate plan designed to develop or contribute to generalizable knowledge, it is research. Research includes activities that meet this definition, whether or not they are conducted under a program considered research for other purposes. For example, some demonstration and service programs may include research activities.

(2) The regulations define a *human subject* as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or obtains identifiable private information. (34 CFR 97.102(f)). The definition of a human subject is met if an activity involves obtaining—

(i) Information about a living person by—

(A) Manipulating that person's environment, as might occur when a new instructional technique is tested; or

(B) Communicating or interacting with the individual, as occurs with surveys and interviews; or

(ii) Private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information). Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that an individual can reasonably expect will not be made public (for example, a school health record).

(c) *Exemptions.* The regulations provide exemptions from coverage for activities in which the only involvement of human subjects will be in one or more of the categories set forth in 34 CFR 97.101(b)(1)–(6). However, if the research subjects are children, the exemption at 34 CFR 97.101(b)(2) ( *i.e.*, research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior) is modified by 34 CFR 97.401(b), as explained in paragraph (d) of this provision. Research studies that are conducted under a Federal statute that requires without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter, *e.g.*, the Institute of Education Sciences

confidentiality statute, 20 U.S.C. 9573, are exempt under 34 CFR 97.101(b)(3)(ii).

(d) *Children as research subjects.* Paragraph (a) of 34 CFR 97.402 of the regulations defines *children* as “persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.” Paragraph (b) of 34 CFR 97.401 of the regulations provides that, if the research involves children as subjects—

(1) The exemption in 34 CFR 97.101(b)(2) does not apply to activities involving—

(i) Survey or interview procedures involving children as subjects; or

(ii) Observations of public behavior of children in which the investigator or investigators will participate in the activities being observed.

(2) The exemption in 34 CFR 97.101(b)(2) continues to apply, unmodified by 34 CFR 97.401(b), to—

(i) Educational tests; and

(ii) Observations of public behavior in which the investigator or investigators will not participate in the activities being observed.

(e) *Proposal Instructions.* An offeror proposing to do research that involves human subjects must provide information to the Department on the proposed exempt and nonexempt research activities. The offeror should submit this information as an attachment to its technical proposal. No specific page limitation applies to this requirement, but the offeror should be brief and to the point.

(1) For exempt research activities involving human subjects, the offeror should identify the exemption(s) that applies and provide sufficient information to allow the Department to determine that the designated exemption(s) is appropriate. Normally, the narrative on the exemption(s) can be provided in one paragraph.

(2) For nonexempt research activities involving human subjects, the offeror must cover the following seven points in the information it provides to the Department:

(i) *Human subjects' involvement and characteristics:* Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, institutionalized individuals, or others who are likely to be vulnerable.

(ii) *Sources of materials:* Identify the sources of research material obtained from or about individually identifiable living human subjects in the form of specimens, records, or data.

(iii) *Recruitment and informed consent:* Describe plans for the recruitment of subjects and the consent procedures to be followed.

(iv) *Potential risks:* Describe potential risks (physical, psychological, social, financial, legal, or other) and assess their likelihood and seriousness. Where appropriate, discuss alternative treatments and procedures that might be advantageous to the subjects.

(v) *Protection against risk:* Describe the procedures for protecting against or minimizing potential

risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(vi) *Importance of knowledge to be gained*: Discuss why the risks to the subjects are reasonable in relation to the importance of the knowledge that may reasonably be expected to result.

(vii) *Collaborating sites*: If research involving human subjects will take place at collaborating site(s), name the sites and briefly describe their involvement or role in the research. Normally, the seven-point narrative can be provided in two pages or less.

(3) If a reasonable potential exists that a need to conduct research involving human subjects may be identified after award of the contract and the offeror's proposal contains no definite plans for such research, the offeror should briefly describe the circumstances and nature of the potential research involving human subjects.

(f) *Assurances and Certifications*. (1) In accordance with the regulations and the terms of this provision, all contractors and subcontractors that will be engaged in covered human subjects research activities shall be required to comply with the requirements for Assurances and Institutional Review Board approvals, as set forth in the contract clause 3452.224-72 (Research activities involving human subjects).

(2) The contracting officer reserves the right to require that the offeror have or apply for the assurance and provide documentation of Institutional Review Board (IRB) approval of the research prior to award.

(g)(1) The regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research Web site:  
<http://ed.gov/about/offices/list/ocfo/humansub.html>.

(2) Offerors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education, Office of the Chief Financial Officer, Financial Management Operations, 400 Maryland Avenue, SW., Washington, DC 20202-4331, Telephone: (202) 245 8090.

(End of Provision)

### **3452.224-72 Research activities involving human subjects.**

As prescribed in [3424.170](#), insert the following clause in any contract that includes research activities involving human subjects covered under 34 CFR part 97:

#### Research Activities Involving Human Subjects (MAR 2011)

(a) In accordance with Department of Education regulations on the protection of human subjects in research, title 34, Code of Federal Regulations, part 97 ("the regulations"), the contractor, any subcontractors, and any other entities engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects. The definitions in 34 CFR 97.102 apply to this clause. As used in this clause, *covered research* means research involving human subjects that is not exempt under 34 CFR 97.101(b) and 97.401(b).

(b) If ED determines that proposed research activities involving human subjects are covered ( *i.e.*, not exempt under the regulations), the contracting officer or contracting officer's designee will require the contractor to apply for the Federal Wide Assurance from the Office for Human Research Protections, U.S. Department of Health and Human Services, if the contractor does not already have one on file. The contracting officer will also require that the contractor obtain and send to the Department documentation of Institutional Review Board (IRB) review and approval of the research.

(c) In accordance with 34 CFR part 97, all subcontractors and any legally separate entity (neither owned nor operated by the contractor) that will be engaged in covered research activities under or related to this contract shall be required to comply with the requirements for assurances and IRB approvals. The contractor must include the substance of this clause, including paragraph (c) of this clause, in all subcontracts, and must notify any other entities engaged in the covered research activities of their responsibility to comply with the regulations.

(d) Under no condition shall the contractor conduct, or allow to be conducted, any covered research activity involving human subjects prior to the Department's receipt of the certification that the research has been reviewed and approved by the IRB. (34 CFR 97.103(f).) No covered research involving human subjects shall be initiated under this contract until the contractor has provided the contracting officer (or the contracting officer's designee) a properly completed certification form certifying IRB review and approval of the research activity, and the contracting officer or designee has received the certification. This restriction applies to the activities of each participating entity.

(e) In accordance with 34 CFR 97.109(e), an IRB must conduct continuing reviews of covered research activities at intervals appropriate to the degree of risk, but not less than once a year. Covered research activities that are expected to last one year or more are therefore subject to review by an IRB at least once a year.

(1) For each covered activity under this contract that requires continuing review, the contractor shall submit an annual written representation to the contracting officer (or the contracting officer's designee) stating whether covered research activities have been reviewed and approved by an IRB within the previous 12 months. The contractor may use the form titled "Protection of Human Subjects: Assurance Identification/Certification/Declaration of Exemption" for this representation. For multi-institutional projects, the contractor shall provide this information on its behalf and on behalf of any other entity engaged in covered research activities for which continuing IRB reviews are required.

(2) If the IRB disapproves, suspends, terminates, or requires modification of any covered research activities under this contract, the contractor shall immediately notify the contracting officer in writing of the IRB's action.

(f) The contractor shall bear full responsibility for performing as safely as is feasible all activities under this contract involving the use of human subjects and for complying with all applicable regulations and requirements concerning human subjects. No one (neither the contractor, nor any subcontractor, agent, or employee of the contractor, nor any other person or organization, institution, or group of any kind whatsoever) involved in the performance of such activities shall be deemed to constitute an agent or employee of the Department of Education or of the Federal government with respect to such activities. The contractor agrees to discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the contractor and its employees.

(g) Upon discovery of any noncompliance with any of the requirements or standards stated in paragraphs (b) and (c) of this clause, the contractor shall immediately correct the deficiency. If at any

time during performance of this contract, the contracting officer determines, in consultation with the Protection of Human Subjects Coordinator, Office of the Chief Financial Officer, or the sponsoring office, that the contractor is not in compliance with any of the requirements or standards stated in paragraphs (b) and (c) of this clause, the contracting officer may immediately suspend, in whole or in part, work and further payments under this contract until the contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing.

(h) The Government may terminate this contract, in full or in part, for failure to fully comply with any regulation or requirement related to human subjects involved in research. Such termination may be in lieu of or in addition to suspension of work or payment. Nothing herein shall be construed to limit the Government's right to terminate the contract for failure to fully comply with such requirements.

(i) The regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research Web site:  
<http://ed.gov/about/offices/list/ocfo/humansub.html>.

Contractors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education, Office of the Chief Financial Officer, Financial Management Operations, 400 Maryland Avenue, SW., Washington, DC 20202-4331, Telephone: (202) 245-8090.

(End of Clause)

#### **3452.227-70 Publication and publicity.**

As prescribed in [3427.409](#), insert the following clause in all solicitations and contracts other than purchase orders:

Publication and Publicity (MAR 2011)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the contracting officer's representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgement shall read substantially as follows:

"This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number [Insert number]. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

(End of Clause)

#### **3452.227-71 Advertising of awards.**

As prescribed in [3427.409](#), insert the following clause in all solicitations and contracts other than purchase orders:

## Advertising of Awards (MAR 2011)

The contractor agrees not to refer to awards issued by, or products or services delivered to, the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal government or is considered by the Federal government to be superior to other products or services.

(End of Clause)

### **3452.227-72 Use and Non-Disclosure Agreement.**

As prescribed in 3427.409, insert the following clause in all contracts over the simplified acquisition threshold, and in contracts under the simplified acquisition threshold as appropriate:

#### Use and Non-Disclosure Agreement (MAR 2011)

(a) Except as provided in paragraph (b) of this clause, proprietary data, technical data, or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement in paragraph (c) of this clause prior to release or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data subject to limited rights, or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of proprietary data, technical data, or computer software subject to special license rights, modify paragraph (c)(1)(iv) of this clause to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display, or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors that require access to a third party's data or software for the performance of a Government contract that contains the 3452.227-73 clause, Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

(c) The prescribed use and non-disclosure agreement is:

#### Use and Non-Disclosure Agreement

The undersigned, *[Insert Name]*, an authorized representative of the *[Insert Company Name]*, (which is hereinafter referred to as the "recipient") requests the Government to provide the recipient with proprietary data, technical data, or computer software (hereinafter referred to as "data") in which the Government's use, modification, reproduction, release, performance, display, or disclosure rights are restricted. Those data are identified in an attachment to this agreement. In consideration for receiving such data, the recipient agrees to use the data strictly in accordance with this agreement.

(1) The recipient shall—

(i) Use, modify, reproduce, release, perform, display, or disclose data marked with Small Business

Innovative Research (SBIR) data rights legends only for government purposes and shall not do so for any commercial purpose. The recipient shall not release, perform, display, or disclose these data, without the express written permission of the contractor whose name appears in the restrictive legend (the contractor), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these data to submit offers for, or perform, contracts with the recipient. The recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these data to such persons. Such an agreement must be consistent with the terms of this agreement.

(ii) Use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data marked with limited rights legends only as specified in the attachment to this agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this agreement or expressly permitted in writing by the contractor.

(iii) Use computer software marked with restricted rights legends only in performance of contract number *[insert contract number(s)]*. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share; or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend.

(iv) Use, modify, reproduce, release, perform, display, or disclose data marked with special license rights legends [To be completed by the contracting officer. See paragraph (a)(2) of this clause. Omit if none of the data requested is marked with special license rights legends].

(2) The recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these data from inadvertent release or disclosure to unauthorized third parties.

(3) The recipient agrees to accept these data "as is" without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding data specified in a contract for the performance of that contract.

(4) The recipient may enter into any agreement directly with the contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these data.

(5) The recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data received from the Government with restrictive legends by the recipient or any person to whom the recipient has released or disclosed the data.

(6) The recipient is executing this agreement for the benefit of the contractor. The contractor is a third party beneficiary of this agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the recipient or any other person to whom the recipient has released or disclosed the data, to seek damages from any breach of this agreement, or to otherwise enforce this agreement.

(7) The recipient agrees to destroy these data, and all copies of the data in its possession, no later than 30 days after the date shown in paragraph (8) of this agreement, to have all persons to whom it released the data do so by that date, and to notify the contractor that the data have been destroyed.

(8) This agreement shall be effective for the period commencing with the recipient's execution of this agreement and ending upon *[Insert Date]*. The obligations imposed by this agreement shall

survive the expiration or termination of the agreement.

*[Insert business name.]*

Recipient's Business Name

*[Have representative sign.]*

Authorized Representative

*[Insert date.]*

Date

*[Insert name and title.]*

Representative's Typed Name and Title

(End of Clause)

**3452.227-73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.**

As prescribed in [3427.409](#), insert the following clause in all contracts of third party vendors who require access to Government-furnished information including other contractors' technical data, proprietary information, or software:

Limitations on The Use Or Disclosure of Government-Furnished Information Marked With Restrictive Legends (MAR 2011)

(a) For contracts under which data are to be produced, furnished, or acquired, the terms *limited rights* and *restricted rights* are defined in the rights in data—general clause (FAR 52.227-14).

(b) Proprietary data, technical data, or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *Proprietary data with legends that serve to restrict disclosure or use of data.* The contractor shall use, modify, reproduce, perform, or display proprietary data received from the Government with proprietary or restrictive legends only in the performance of this contract. The contractor shall not, without the express written permission of the party who owns the data, release, or disclose such data or software to any person.

(2) *GFI marked with limited or restricted rights legends.* The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(3) *GFI marked with specially negotiated license rights legends.* The contractor shall use, modify, reproduce, release, perform, or display proprietary data, technical data, or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the use and non-

disclosure agreement. The contractor shall modify paragraph (c)(1)(iii) of the use and non-disclosure agreement (3452.227-72) to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights.

(1) The contractor agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of proprietary data, technical data, or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software.

(2) The contractor agrees that the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of proprietary data, technical data, or computer software subject to restrictive legends.

(End of Clause)

**3452.228-70 Required insurance.**

As prescribed in [3428.311-2](#), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Required Insurance (MAR 2011)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR Subpart 28.3. Prior written approval of the contracting officer shall be required with respect to any insurance policy, the premiums for which the contractor proposes to treat as a direct cost under this contract, and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

(End of Clause)

**3452.232-70 Limitation of cost or funds.**

The following clause shall be inserted in all contracts that include a Limitation of cost or Limitation of funds clause in accordance with [3432.705-2](#):

Limitation of Cost or Funds (MAR 2011)

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following order:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

(End of Clause)

#### **3452.232-71 Incremental funding.**

As prescribed in [3432.705-2](#), insert the following provision in solicitations if a cost-reimbursement contract using incremental funding is contemplated:

Incremental Funding (MAR 2011)

Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled "Limitation of Funds" in FAR 52.232-22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for costs incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(End of Provision)

#### **3452.237-70 Services of consultants.**

As prescribed in [3437.270](#), insert the following clause in all solicitations and resultant cost-reimbursement contracts that do not provide services to FSA:

Services of Consultants (MAR 2011)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts" (FAR 52.244-2), the prior written approval of the contracting officer shall be required—

(a) If any employee of the contractor is to be paid as a "consultant" under this contract; and

(b)(1) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, \$800, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

(2) If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fee to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by the consultant to others for performing consultant services of a similar nature.

(End of Clause)

**3452.237-71 Observance of administrative closures.**

As prescribed in [3437.170](#), insert the following clause in all solicitations and service contracts:

Observance of Administrative Closures (MAR 2011)

(a) The contract schedule identifies all Federal holidays that are observed under this contract. Contractor performance is required under this contract at all other times, and compensated absences are not extended due to administrative closures of Government facilities and operations due to inclement weather, Presidential decree, or other administrative issuances where Government personnel receive early dismissal instructions.

(b) In cases of contract performance at a Government facility when the facility is closed, the vendor may arrange for performance to continue during the closure at the contractor's site, if appropriate.

(End of Clause)

**3452.239-70 Internet protocol version 6 (IPv6).**

As prescribed in [3439.701](#), insert the following clause in all solicitations and resulting contracts for hardware and software:

Internet Protocol Version 6 (MAR 2011)

(a) Any system hardware, software, firmware, or networked component (voice, video, or data) developed, procured, or acquired in support or performance of this contract shall be capable of transmitting, receiving, processing, forwarding, and storing digital information across system boundaries utilizing system packets that are formatted in accordance with commercial standards of Internet protocol (IP) version 6 (IPv6) as set forth in Internet Engineering Task Force (IETF) Request for Comments (RFC) 2460 and associated IPv6-related IETF RFC standards. In addition, this system shall maintain interoperability with IPv4 systems and provide at least the same level of performance and reliability capabilities of IPv4 products.

(b) Specifically, any new IP product or system developed, acquired, or produced must—

(1) Interoperate with both IPv6 and IPv4 systems and products; and

(2) Have available contractor/vendor IPv6 technical support for development and implementation and fielded product management.

(c) Any exceptions to the use of IPv6 require the agency's CIO to give advance, written approval.

(End of Clause)

### **3452.239-71 Notice to offerors of Department security requirements.**

As prescribed in [3439.702](#), include the following provision in solicitations when the offeror's employees would have access to Department-controlled facilities or space, or when the work (wherever located) would involve the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information:

Notice to Offerors of Department Security Requirements (MAR 2011)

(a) The offeror and any of its future subcontractors will have to comply with Department security policy requirements as set forth in the "Bidder's Security Package: Security Requirements for Contractors Doing Business with the Department of Education" at:

<http://www.ed.gov/fund/contract/about/bsp.html>.

(b) All contractor employees must undergo personnel security screening if they will be employed for 30 days or more, in accordance with Departmental Directive OM:5-101, "Contractor Employee Personnel Security Screenings," available at:

<http://www.ed.gov/fund/contract/about/acs/acsom5101.doc>.

(c) The offeror shall indicate the following employee positions it anticipates to employ in performance of this contract and their proposed risk levels based on the guidance provided in Appendix I of Departmental Directive OM:5-101:

High Risk (HR): [Specify HR positions.].

Moderate Risk (MR): [Specify MR positions.].

Low Risk (LR): [Specify LR positions.].

(d) In the event the Department disagrees with a proposed risk level assignment, the issue shall be subject to negotiation. However, if no agreement is reached, the Department's risk level assignment shall be used. The type of screening and the timing of the screening will depend upon the nature of the contractor position, the type of data to be accessed, and the type of information technology (IT) system access required. Personnel security screenings will be commensurate with the risk and magnitude of harm the individual could cause.

(End of Provision)

### **3452.239-72 Department security requirements.**

As prescribed in [3439.702](#), include the following clause in contracts when the contractor's employees will have access to Department-controlled facilities or space, or when the work (wherever located) would involve the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information:

Department Security Requirements (MAR 2011)

(a) The contractor and its subcontractors shall comply with Department security policy requirements as set forth in the "Bidder's Security Package: Security Requirements for Contractors Doing Business with the Department of Education" at <http://www.ed.gov/fund/contract/about/bsp.html>.

(b) The following are the contractor employee positions required under this contract and their designated risk levels:

High Risk (HR): [Specify HR positions.]

Moderate Risk (MR): [Specify MR positions.]

Low Risk (LR): [Specify LR positions.]

(c) All contractor employees must undergo personnel security screening if they will be employed for 30 days or more, in accordance with Departmental Directive OM:5-101, "Contractor Employee Personnel Security Screenings." The type of screening and the timing of the screening will depend upon the nature of the contractor position, the type of data to be accessed, and the type of information technology (IT) system access required. Personnel security screenings will be commensurate with the risk and magnitude of harm the individual could cause.

(d) The contractor shall—

(1) Ensure that all non-U.S. citizen contractor employees are lawful permanent residents of the United States or have appropriate work authorization documents as required by the Department of Homeland Security, Bureau of Immigration and Appeals, to work in the United States.

(2) Ensure that no employees are assigned to high risk designated positions prior to a completed preliminary screening.

(3) Submit all required personnel security forms to the contracting officer's representative (COR) within 24 hours of an assignment to a Department contract and ensure that the forms are complete.

(4) Ensure that no contractor employee is placed in a higher risk position than that for which he or she was previously approved, without the approval of the contracting officer or the COR, the Department personnel security officer, and the Department computer security officer.

(5) Ensure that all contractor employees occupying high-risk designated positions submit forms for reinvestigation every five years for the duration of the contract or if there is a break in service to a Department contract of 365 days or more.

(6) Report to the COR all instances of individuals seeking to obtain unauthorized access to any departmental IT system, or sensitive but unclassified and/or Privacy Act protected information.

(7) Report to the COR any information that raises an issue as to whether a contractor employee's eligibility for continued employment or access to Department IT systems, or sensitive but unclassified and/or Privacy Act protected information, promotes the efficiency of the service or violates the public trust.

(8) Withdraw from consideration under the contract any employee receiving an unfavorable adjudication determination.

(9) Officially notify each contractor employee if he or she will no longer work on a Department contract.

(10) Abide by the requirements in Departmental Directive OM:5-101, "Contractor Employee Personnel Security Screenings."

(e) Further information including definitions of terms used in this clause and a list of required investigative forms for each risk designation are contained in Departmental Directive OM:5-101, "Contractor Employee Personnel Security Screenings" available at the Web site listed in the first paragraph of this clause.

(f) Failure to comply with the contractor personnel security requirements may result in a termination of the contract for default.

(End of Clause)

### **3452.239-73 Federal desktop core configuration (FDCC) compatibility.**

As prescribed in [3439.703](#), insert the following clause in all solicitations and contracts where software will be developed, maintained, or operated on any system using the FDCC configuration:

Federal Desktop Core Configuration (FDCC) Compatibility (MAR 2011)

(a) (1) The provider of information technology shall certify applications are fully functional and operate correctly as intended on systems using the Federal desktop core configuration (FDCC). This includes Internet Explorer 7 configured to operate on Windows XP and Windows Vista (in Protected Mode on Vista).

(2) For the Windows XP settings, *see: [http://csrc.nist.gov/itsec/guidance\\_WinXP.html](http://csrc.nist.gov/itsec/guidance_WinXP.html)*, and for the Windows Vista settings, *see: [http://csrc.nist.gov/itsec/guidance\\_vista.html](http://csrc.nist.gov/itsec/guidance_vista.html)*.

(b) The standard installation, operation, maintenance, update, or patching of software shall not alter the configuration settings from the approved FDCC configuration. The information technology should also use the Windows Installer Service for installation to the default "program files" directory and should be able to silently install and uninstall.

(c) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

(End of Clause)

### **3452.242-70 Litigation and claims.**

As prescribed in [3442.7001](#), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Litigation and Claims (MAR 2011)

(a) The contractor shall give the contracting officer immediate notice in writing of—

(1) Any legal action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for cost that is allowable under the “allowable cost and payment” clause.

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall—

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claims (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but that the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of Clause)

#### **3452.242-71 Notice to the Government of delays.**

As prescribed in [3442.7002](#), insert the following clause in all solicitations and contracts other than purchase orders:

Notice to The Government Of Delays (MAR 2011)

The contractor shall notify the contracting officer of any actual or potential situation, including but not limited to labor disputes, that delays or threatens to delay the timely performance of work under this contract. The contractor shall immediately give written notice thereof, including all relevant information.

(End of Clause)

#### **3452.242-73 Accessibility of meetings, conferences, and seminars to persons with disabilities.**

As prescribed in [3442.7101](#)(b), insert the following clause in all solicitations and contracts:

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (MAR 2011)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of Clause)

**3452.243-70 Key personnel.**

As prescribed in [3443.107](#), insert a clause substantially the same as the following in all solicitations and resultant cost-reimbursement contracts in which it will be essential for the contracting officer to be notified that a change of designated key personnel is to take place by the contractor:

Key Personnel (MAR 2011)

(a) The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without written consent of the contracting officer; provided, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect the addition or deletion of key personnel.

(b) The following personnel have been identified as Key Personnel in the performance of this contract:

Labor category	Name
[Insert category.]	[Insert name.]

(End of Clause)

**3452.247-70 Foreign travel.**

As prescribed in [3447.701](#), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

Foreign Travel (MAR 2011)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, *foreign travel* means travel outside the Continental United States, as defined in the Federal Travel Regulation. Travel to non-foreign areas (including the States of Alaska and Hawaii, the Commonwealths of Puerto Rico, Guam and the Northern Mariana Islands and the territories and possessions of the United States) is considered “foreign travel” for the purposes of this clause.

(End of Clause)