

**HONEYWELL FEDERAL MANUFACTURING & TECHNOLOGIES, LLC TERMS
AND CONDITIONS OF PURCHASE,
FIXED-PRICE PURCHASE ORDERS/CONTRACTS
(NON-COMMERCIAL ITEMS- Terms 1602-04-21)
Effective: September 2021**

(Be advised that Honeywell FM&T is a Management and Operating (M&O) Contractor for the Department of Energy (DOE). As such, the work performed under M&O contracts is directly linked to DOE's mission, is of a long-term and continuing nature, and, among other things, includes special requirements for work direction, safety, security, cost controls, and site management. Any attempt by Sellers to alter, revise or diminish the terms/conditions and/or regulations stated herein, is an alteration to a government funded contract and may jeopardize Honeywell's ability to do business with your firm now or in the future; exceptions are strongly discouraged.)

1. DEFINITIONS

As used throughout this Order, the following terms shall have the meaning set forth below:

- (a) "Buyer" means Honeywell Federal Manufacturing & Technologies, LLC (herein "Honeywell FM&T"), in the performance of its prime contract with The United States of America and includes any duly authorized representative thereof acting within authorized limits.
- (b) "Commercial Item/Service" or "Commercial Component" means the same as the definitions for these terms at FAR 2.101.
- (c) "Commercially available off-the-shelf" or "COTS" item means the same as the definition as provided in FAR 2.101.
- (d) "Contract" means the same as the definition at FAR 2.101 and specifically includes this Order.
- (e) "Contracting Officer" means the same as the definition at FAR 2.101 and specifically includes "Buyer" to the extent necessary to enable Buyer to administer this Order and to perform its obligations under its Government prime contract
- (f) "Contractor" means "Buyer" when used in the context of referring to a prime contractor with the U.S. Government in a FAR or DEAR clause/provision incorporated into this Order, unless otherwise expressly stated herein. In all other instances, "Contractor" means "Seller."
- (g) "Counterfeit Item" A counterfeit item is one that has been copied or substituted without legal right or authority or whose material, performance or characteristics have been misrepresented by the supplier or manufacturer.
- (h) "DOE" means U.S. Department of Energy or any duly authorized representative thereof, including the Contracting Officer.
- (i) "DEAR" means Department of Energy Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Order.
- (j) "FAR" means Federal Acquisition Regulation, including all amendments and changes thereto in effect on the date of issuance of this Order.
- (k) "Government" means The United States of America.
- (l) "Micro-Purchase Threshold" means the same as the definition in FAR 2.101.
- (m) "Order" means purchase order/contract when used in the context of referring to a contractual relationship between Buyer and Seller.
- (n) "SAT" means Simplified Acquisition Threshold as defined in FAR 2.101.

- (o) "Seller" means any person or company having a contract for the supply of good or service to the Buyer as identified in the Order.
- (p) "Subcontract(s)" and "Subcontractor(s)" includes this Order when used in a FAR or DEAR clause referring to a prime and subcontractor relationship. Otherwise, it means Seller's lower tier subcontract(s) and subcontractor(s), respectively. The term "subcontract" includes purchase orders and changes, modifications, or amendments to subcontracts and purchase orders.
- (q) "Suspect Item" An item is suspect when inspection or testing indicates that it may not conform to established Government or industry- accepted specifications or national consensus standards or whose documentation, appearance, performance, material or other characteristics may have been misrepresented by the seller or manufacturer.

2. APPLICABLE TERMS/MODIFICATIONS

Agreement by Seller to furnish the goods or services, or Seller's commencement of such performance, shall constitute Seller's unqualified acceptance of this Order subject to these terms and conditions. This Order is the complete and exclusive statement of the terms of the agreement between Seller and Buyer. No modification of this Order (including any addition, deletion, or other modification proposed in Seller's acceptance) shall be binding on Buyer unless agreed to by Buyer in a writing signed by Buyer's Purchasing Department Representative.

3. SHIPPING INSTRUCTIONS AND INSURANCE

- (a) If Buyer is responsible for shipping costs under this Order and has authorized shipment on a commercial bill of lading, the commercial shipping documents must be annotated as follows:

"Transportation is for the U.S. Department of Energy/NNSA and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No DE-NA0002839. This may be confirmed by contacting the Logistics Dept., Honeywell FM&T, 14520 Botts Rd., Kansas City, MO 64147."

- (b) A packing list must accompany each shipment; otherwise, Buyer's count will be accepted as final and conclusive. The packing list must indicate Buyer's Order number and the part number or code number. If shipment is made by Seller's supplier, Seller's name must be shown on the packing list in addition to the above information. Seller shall mark Buyer's Order number on all packages and consolidate daily shipments. If transportation charges are dependent on released valuation, Seller shall release the shipment at the value resulting in the lowest charges. Bill of lading advice of shipment must be sent as soon as material is forwarded, giving the correct Order, part, or requisition number, description of material and full forwarding information. All material must be forwarded in accordance with routing specified on this Order or additional instructions issued by Buyer. Seller shall not insure item(s) shipped FOB shipping point.

4. TITLE AND RISK OF LOSS

- (a) Title to items or services furnished under this Order shall pass to the Government upon acceptance by Buyer, regardless of when or where Buyer takes physical possession.
- (b) Except as provided under paragraph (c) below, and regardless of the point of inspection or acceptance, risk of loss or damage to items provided under this Order shall remain with Seller until, and shall pass to Buyer upon delivery of items to the:
 - (1) Shipping point carrier, if Buyer pays carrier's transportation costs; or
 - (2) Buyer or Buyer's designee at the final delivery destination specified in the Order, if Seller pays transportation costs.

- (c) Paragraph (b) above shall not apply to items that so fail to conform to Order requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with Seller until cure or acceptance. Also, Seller shall not be liable for loss of or damage to items caused by the negligence of officers, agents, or employees of Buyer acting within the scope of their employment.

5. PRICES AND NEW MATERIAL

Unless otherwise provided in this Order, the:

- (a) Prices appearing herein include all packaging and crating.
- (b) Seller warrants that the items furnished under this Order are new and are of not such age or so deteriorated as to impair their usefulness or safety. Used items that have been refurbished and warranted as new are considered used.

6. INSPECTION AND ACCEPTANCE

- (a) Unless otherwise specified in this Order, Seller shall be responsible for all quality assurance measures necessary to ensure that only items and services conforming to the requirements of this Order are tendered to Buyer for acceptance. This shall include such testing, in process inspection and other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by seller's suppliers and incorporated into end items furnished to Buyer are not counterfeit or of suspect quality.
- (b) Notwithstanding Seller's responsibility for all quality assurance measures as described in paragraph (a) above, Buyer has the right to conduct in process inspections, if this Order is for services. Seller shall provide all reasonable facilities and assistance for the safe and convenient performance of such inspections without additional charges.
- (c) Buyer reserves the right to inspect and test all items and services that have been tendered for acceptance. Buyer has the right to reject nonconforming items and services with or without disposition instructions from Seller; the right to require their correction, replacement, re- performance; the right to accept nonconforming items or services and reduce the Order amount to reflect the reduced value of the nonconformance(s); or the right to terminate this Order for cause.

7. PREFERENCE AND CERTIFICATION FOR DOMESTIC END PRODUCTS

The terms "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the FAR clause 52.225-1 Buy American—Supplies.

Buyer prefers delivery of domestic end products.

Seller acknowledges, agrees, and certifies in J-4.1 (Buy American Certificate) of the Order that by delivery of goods to Buyer that: (1) Seller certifies that each end product is a domestic end product (for other than COTS items manufactured in the United States), Offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States, or (2) Seller shall identify in writing any foreign end products by country of origin. Seller shall identify as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item manufactured in the United States and does not meet the component test in the definition of "domestic end product."

8. FEDERAL, STATE AND LOCAL TAXES

Sales taxes, gross receipts taxes, and use taxes may be applicable to this Order unless Buyer provides Seller with evidence of exemption from such taxes. Payment of any applicable taxes are the sole responsibility of the Seller.

9. INVOICES, DISCOUNTS, AND PAYMENTS

- (a) Seller shall be paid, upon submission of proper invoice(s), the prices stipulated herein for items and services accepted by Buyer, less any deductions, setoffs or recoupments. Seller shall submit an original invoice (electronic submission preferred) to the billing address specified in the Order. Unless otherwise specified in the Order billing instructions, each invoice must include the following information:
- (1) Unique or non-repeating invoice number;
 - (2) Invoice date;
 - (3) Buyer's Order number;
 - (4) Order line item number, description of product or service, quantity, unit of measure, unit price, and extended price for each line item for which payment is being requested;
 - (5) Total invoice price;
 - (6) Seller standard payment terms, or;
 - (7) Discount payment terms offered;
 - (8) If applicable, identify shipping number and date of shipment, including bill of lading number and weight if shipped on a Government bill of lading;
 - (9) Seller name;
 - (10) Seller remit payment address;
 - (11) Name, address, and phone number of Seller representative to contact in the event of a defective invoice.
- (b) Unless otherwise specified in the Order, Buyer's standard payment terms are "Net 30 days" from the date of invoice receipt. Buyer will, however, consider early payment where discounts for prompt payment are specified either in the terms of the Order or stated on Seller's invoice. Early payment to earn discounts is at the sole discretion of Buyer. For purposes of computing the discount earned, payment shall be deemed to have been made on the date appearing on Buyer's payment check or on the date which an electronic funds transfer was made. In connection with any discount offered for early payment, time shall be computed from the latest of the following dates:
- (1) Date of delivery to the carrier when delivery is f.o.b. shipping point;
 - (2) Date of delivery at destination when delivery is f.o.b. destination;
 - (3) Date a correct invoice is received in the office specified in Buyer's Order.
- (c) Notwithstanding the requirement of paragraph (a) above for Buyer acceptance as a prerequisite to payment, Buyer may, at its sole discretion, allow payment prior to Buyer inspection or acceptance of items or services where lead- times for shipping, inspections, tests, or other Buyer acceptance activities would unduly delay payments. Seller agrees that payments made prior to inspection or acceptance shall not affect any rights of Buyer including, without limitation, rights under the "Inspection" and/or "Warranty" provisions of this Order.

10. DELAYS AND FORCE MAJEURE

- (a) On time performance is a material condition of this Order and failure to perform according to the delivery schedule in this Order, if unexcused, shall be considered a material breach. Acceptance of late deliveries shall not constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of this Order or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.

- (b) Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies hereunder.
- (c) Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that performance of this Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the Party whose performance is so affected shall so notify the other Party's authorized representative in writing promptly but no later than fourteen (14) days after the Party became aware, or should have become aware of the event of Force Majeure and, at Buyer's option, this Order may be completed with such adjustments to delivery schedule as may reasonably be required by the existence of Force Majeure.

11. TERMINATION FOR CONVENIENCE

Buyer may terminate this Order in whole or in part for its convenience or the Government's convenience. Buyer shall terminate the Order by giving written notice to Seller specifying the effective date of the termination. In the event of a termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. In the event of termination for convenience by Buyer, Seller may be reimbursed for actual, reasonable, substantiated, and allocable costs, plus a reasonable profit for work performed to date of termination. Any termination settlement proposal shall be submitted to Buyer promptly, but no later than ninety (90) days from the effective date of the termination. Any settlement amount paid under this provision is subject to mutual written agreement of the Parties, and in no event shall the amount of any settlement be in excess of the Order value. Buyer may take immediate possession of all goods, complete or incomplete, and all products resulting from services upon written notice of termination to Seller.

12. TERMINATION FOR CAUSE

- (a) Buyer may terminate this Order, in whole or in part, if the Seller fails to (i) Deliver the supplies within the time specified in this Order or any extension agreed to in writing by Buyer and Seller; (ii) Make progress, so as to endanger performance of this Order (but see paragraph (b) of this clause); or (iii) Perform any of the other provisions of this Order (but see paragraph (b) of this clause).
- (b) The Buyer's right to terminate this Order under subparagraphs (a)(ii) and (iii) of this clause may be exercised if the Seller does not cure such failure within 5 days (or more if authorized in writing by the Buyer) after receipt of the written notice from Buyer's purchasing representative specifying the failure.
- (c) In the event of termination for cause, Buyer shall pay Seller the Order price for any amount of supplies or services that have been accepted, and Seller shall be liable to Buyer for any and all rights and remedies provided by law. If it is later determined that Buyer improperly terminated this Order for default, such termination shall be converted to a termination for convenience as set forth in section 11 of this Agreement.

13. CHANGES

- (a) Buyer may, at any time, by written notice, make changes within the general scope of this Order in any one or more of the following: (1) description of the work to be performed, (2) method and manner of performance, and (3) the amount of work to be furnished. If any such change causes a difference in the cost, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Order signed by both parties. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Buyer's change notice, although Buyer in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with section 14.
- (b) Only the Buyer's Procurement Representative is authorized on behalf of Buyer to issue changes. If Seller considers that any direction or instruction by Buyer personnel constitutes a change, Seller shall not rely upon such instruction or direction without written confirmation from the Buyer's Procurement Representative. Nothing in this clause, including any disagreement with Buyer about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

14. RESOLUTION OF DISPUTES

- (a) Seller and Buyer agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. The parties may consider the use of alternative disputes resolution (ADR). In the event mediation or arbitration is mutually agreed upon, costs shall be mutually shared by Seller and Buyer and it is agreed that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows: (1) any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Western District of Missouri, Western Division; (2) provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the 16th Judicial Circuit Court of Jackson County, Missouri.
- (b) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal law. To the extent there is no Federal law, Missouri state law shall apply.
- (c) It is agreed that in the event of a dispute, there shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Seller and its sub-tier subcontractors.

15. WAIVER, RIGHTS AND REMEDIES

The rights and remedies of the Parties set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay of either Party to exercise any rights or remedies under this Order shall not operate as a general waiver thereof, nor will any failure or delay prejudice the right of that Party to take any action in the future to enforce any provision. No waiver shall be effective unless expressly set forth in writing and signed by the Parties.

16. SUSPECT/COUNTERFEIT ITEM WARRANTY

Seller warrants that all items, including subassemblies, components, and parts, tendered to Buyer shall be genuine, new and unused, and conform to the requirements of this Order, unless otherwise approved in writing by Buyer prior to delivery. Seller further warrants that all components, parts, materials, and supplies incorporated into Buyer facilities or equipment by Seller during performance of work at Buyer's facilities, shall be genuine, new and unused, and original-equipment-manufacturer items, unless otherwise approved in writing by Buyer as suitable for the intended purpose prior to use. Seller's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied to Buyer, and to certifications, affirmations, information, or documentation related to the authenticity and quality of items supplied or delivered to Buyer under this Order.

Seller shall indemnify Buyer, its agents, and assignees for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts furnished or used under this Order that are not genuine, original, and new and unused, or otherwise not suitable for the intended purpose. Seller's indemnity includes any financial loss, injury, or property damage resulting directly or indirectly from items furnished or used under this Order that are defective, suspect, or counterfeit, or that have been provided under false pretenses, or that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Suspect/counterfeit items furnished under this Order will be impounded by Buyer. Seller must promptly replace them, at no cost, with items acceptable to Buyer, and Seller shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit item characteristics or conditions.

Because falsification of information or documentation may constitute criminal conduct, Buyer will segregate impounded items and related paperwork that are suspected S/CI, pending a determination by National Nuclear Security Administration (NNSA) or Department of Energy (DOE) officials whether the segregated/impounded items should be utilized as evidence.

No liability shall be asserted or enforceable against Buyer, NNSA, or DOE because of impoundment, all such liability being expressly waived by Seller or any person claiming any right or interest under this Order, in the impounded items.

17. WARRANTY

Seller warrants that the goods shall (i) be new; (ii) be free from defects in workmanship, materials, and design; (iii) meet all the requirements of this Order; and (iv) be merchantable and fit for the particular purpose. Seller warrants that services shall conform to the requirements of the Order. The warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the supply; or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the supply or has modified it. Seller further agrees that supplies or services furnished under this Order shall be covered by the same warranties Seller provides any customer for the same or substantially similar supplies or services and that rights and remedies provided by this clause shall extend to the Government and are in addition to and do not limit any rights afforded Buyer by any other clause of this Order.

18. ASSIGNMENT, NOVATION, NAME CHANGE

- (a) Assignment: This Order is assignable by Buyer to the Government or its designee. Neither this Order nor any interest therein, nor claim thereunder, shall be assigned or transferred by Seller except as expressly authorized in writing by Buyer.
- (b) Novation: Seller shall inform Buyer of the transfer of Seller's assets, rights, obligations and/or liabilities, under this Agreement to a separate legal entity and submit written proof of such transfer. Buyer at its sole discretion may recognize the transfer. The novation shall not be effective until all three parties enter into and execute a novation agreement.
- (c) Change of Name: Seller shall inform Buyer of a corporate name change and submit documents as proof of such change. Both parties must enter into and execute a name change agreement.

19. INDEPENDENT CONTRACTOR

Seller shall act solely as an independent contractor in the performance of this Order and nothing herein shall be construed to create, without limitation, a relationship of employment, partnership, agency or joint venture between Buyer and Seller or between Buyer and any of Seller's employees in connection with the work under this Order. Neither Party has the right to bind or obligate the other. Seller agrees not to solicit for employment, either directly or indirectly through a third party, any Honeywell employee during the term of this Contract.

20. SELLER USE OF GOVERNMENT-OWNED/BUYER-SUPPLIED PROPERTY

It is Buyer's policy and intent that Government-owned/ Buyer-supplied property, whether provided directly to Seller under this Order or otherwise provided for use by the Seller, shall not be used by contractors and that terms of our contracts require them to supply all property necessary to perform their required work. It is recognized, however, that exceptional circumstances could result in the necessity for limited use of Government- owned/Buyer-supplied property; therefore, when such occasions arise, the following Indemnification and Hold Harmless provision will be applicable to such use:

- (a) Seller agrees to hold harmless and indemnify Buyer and the United States Government, their officers, agents and employees for any and all damages whatsoever, including, but not limited to, personal injury and property damage sustained as a result of, or arising out of, performance of any work involving the use of Government-owned/Buyer-supplied property.
- (b) Neither Buyer, the United States Government, nor persons acting on their behalf, shall be liable for any injury to or death of persons or other living things or damage to or destruction of property or for any other loss, damage, or injury of any kind whatsoever, including costs and expenses incurred, resulting from Contractor/Seller use and operation of Government- owned/Buyer-supplied property.

This clause shall flow down to all appropriate subcontracts.

21. SELLER RESPONSIBILITY FOR CONTROL OF TECHNICAL DATA

(Applicable if Buyer-furnished data is provided)

- (a) Import and Export Controls:

Seller agrees that all applicable laws, regulations, orders and requirements related to import and export controls ("Controls") shall apply to receipt and use; including without limitation those of the United States and the

jurisdictions in which Seller is established or from which Products may be supplied. In no event shall Seller use, transfer, re-transfer, release, import, export, or re-export Products in violation of said Controls; including such transactions with those who have been denied or debarred from such privileges; and also including any activities that violate U.S. export policies which seek to control nuclear proliferation, missile technology, chemical and biological weapons.

Violations against any Controls, including but not limited to the Export Administration Regulations Atomic Energy Act ("AEA") 42 USC 2011-2259, U.S. Department of State International Traffic in Arms Regulations ("ITAR") 22 CFR 120-130, or the U.S. Department of Commerce Export Administration Regulations ("EAR"), may result in termination by Buyer of this agreement.

Seller may not under any circumstances export any Products, which includes export controlled information or materials, controlled by the AEA; and may not allow any non-U.S. Person access to any such products, information or materials. If Seller intends to export ITAR articles, which includes technical data, to non-U.S. persons, Seller shall first obtain the written consent of Buyer prior to submitting any request for authority to export any Products, and shall assume the responsibility for obtaining an export license or other approval from the U.S. government. If Seller intends to export EAR items, which includes hardware, software, materials or technology, to a foreign person, Seller shall first obtain the written consent of Buyer prior to submitting any request for authority to export, and shall assume the responsibility for obtaining an export license or other approval from the U.S. government.

Seller shall indemnify and hold harmless Buyer, its agents, and assignees for any financial loss, penalties or fines resulting directly or indirectly from Seller's violation of the AEA 42 USC 2011-2259, ITAR 22 CFR 120-130, or the EAR. These clauses are applicable to and shall flow down to all appropriate subcontractors.

(b) Foreign Corrupt Practices Act (FCPA):

Seller represents and warrants that it understands, shall comply with the requirements of the United States Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1 et. seq (the "Act") and shall communicate requirements of the Act to its directors, employees, any agents, consultants, and other third parties affiliated, retained, or otherwise used by Customer in accordance with the terms of this Agreement. Seller shall promptly notify Honeywell FM&T of the occurrence of any event that would or may result in an exception to the foregoing representation.

Under the Act, Seller or any of its Sub-contractors may not, directly or indirectly, in the name of, on behalf of, or for the benefit of Honeywell FM&T offer, promise, or authorize to pay, or pay any compensation, or give anything of value to, any official, agent, or employee of any government or governmental agency, or to any political party or officer, employee, or agency thereof, or any candidate for political office.

22. END USER LICENSE OR SIMILAR AGREEMENTS

When any supply or service acquired under this Order is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Seller or any person or entity for damages, costs, fees or any other loss or liability that would create an Anti-Deficiency Act violation, such clause shall be unenforceable against the Government, unless such indemnification by the Government is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures. Similarly, any clause requiring the Buyer to indemnify the Seller or any person or entity for damages, costs, fees or any other loss or liability that would violate the Buyer's prime contract obligations or any applicable laws or regulations shall be unenforceable against the Buyer. Neither the Government nor Buyer, including, but not limited to their employees, agents, contractors, and subcontractors, acting as an end user of the product shall be deemed to have agreed to such clauses by virtue of their appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument is invoked through an "I agree" type click box or other comparable mechanism (such as "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or Buyer. Any such clauses are deemed to be stricken from the EULA, TOS or similar legal instrument or agreement.

23. RELEASE OF INFORMATION TO THE PUBLIC

Seller shall not, without the prior written consent of Buyer, make any release of information in any form, including but not limited to Buyer's name or marks, other than to Seller's employees and subcontractors which is required for the performance of their work under this Order, which identifies or could lead to the identification of Buyer's name or Buyer's product or which uses Buyer's name or Buyer's product in any advertising, marketing materials, publicity or promotional material, or on Seller's website. Furthermore, Seller will not claim or suggest, implicitly or explicitly, that Buyer's use of its services or deliverables constitutes Buyer's endorsement of its services or deliverables.

24. CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this Order requires that Seller be given access to confidential or proprietary business or financial information belonging to the Government, Buyer or other companies, Seller shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties, including its corporate parent, unless specifically authorized by Buyer in writing. The foregoing obligations, however, shall not apply to information which:
- (1) At the time of receipt by Seller, is in public domain;
 - (2) Is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller;
 - (3) Seller can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government, Buyer or other companies;
 - (4) Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.
- (b) Seller shall obtain the written agreement, in a form satisfactory to Buyer, of each employee permitted access, whereby the employee agrees that he will not use or discuss, divulge or disclose any such information to any person or entity except those persons within Seller's organization directly concerned with the performance of the Order.
- (c) Seller agrees, if requested by Buyer, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to Seller under this Order, and to supply a copy of such agreement to Buyer.
- (d) Seller agrees that upon request by Buyer it will execute a Buyer-approved agreement with any party whose facilities or information it is given access to or is furnished, restricting use and disclosure of the information obtained from the facilities. Upon request by Buyer, such an agreement shall also be signed by Seller personnel.
- (e) This clause shall flow down to all appropriate subcontracts.

25. OBTAINING SECURITY CLEARANCES

(Applicable if work requires access to classified information or to areas of restricted access.)

- (a) Seller shall furnish Buyer advance written notice identifying all subcontractor organizations requiring access to the work site, other areas of FM&T's Plant, or other controlled access facilities.
- (b) Should "L" or "Q" security clearances be required for Seller or lower-tier subcontractor personnel, Seller shall furnish Buyer a letter listing name, citizenship, status and craft of each person.
- (c) Due to length of time and expense required to obtain a security clearance, Seller shall apply for clearances only for permanent employees whose continued employment is anticipated during the overall performance term of Order.
- (d) Buyer will furnish Seller with required forms to initiate processing of security clearances. Seller is responsible for distribution and return of completed forms to Buyer by applicants.

26. NOTIFICATION OF "L" AND "Q" CLEARED OR "UNCLEARED WITH A BADGE" EMPLOYEE TERMINATION

(Applicable if Seller has "L" or "Q" cleared or "Uncleared With A Badge" employees.)

Seller shall notify Buyer's designated security representative by telephone within eight hours after termination of any "L" or "Q" cleared or "Uncleared With A Badge" seller employee who has been assigned to work under this Order. If seller fails to notify Buyer's designated security representative within eight hours, Seller shall be responsible for any damage or injury resulting from or arising out of the actions or omissions of Seller's former employees.

Such notice shall be confirmed by facsimile or e-mail to Buyer's Personnel Security Department.

27. PRIORITY RATING

If so identified, this Order is a "rated order" certified for national defense use, and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

28. PROHIBITION ON ACRONIS BRANDED PRODUCTS AND SERVICES

Acronis is a global technology company that develops on-premises and cloud software for backup, disaster recovery, and secure file sync and share and data access that the DOE Chief Information Officer has determined presents significant risk to the Department's cybersecurity. Seller shall not provide any Acronis branded products or services under this Order and shall not store any Buyer information on Acronis branded software systems.

29. SEVERABILITY

If any provision of this Agreement (or portion thereof) is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the Parties agree the court will construe the provision in a manner that renders the provision valid and enforceable to the fullest extent possible under the law of the applicable jurisdiction and that the remaining provisions will remain in full force and effect.

30. SURVIVAL

All provisions of this Agreement which by their nature should apply beyond its term will remain in force after any termination or expiration of this Agreement including, but not limited to, those addressing the following subjects: Prices; Invoices, Discounts, and Payment; Setoff; Warranty; Stop Work Order; Indemnification; Insurance; Confidentiality; Intellectual Property; Relationship Between the Parties/ Independent Contractor; Applicable Law and Forum; Waiver, Rights, and Remedies; Release of Information to the Public; and Survival.

31. ENTIRE AGREEMENT

This Order, including those additional terms or conditions incorporated herein by reference and made a part hereof, constitute the entire agreement between the Parties with respect to the Order and will supersede all prior or contemporaneous understandings, proposals, negotiations, communications, commitments or representations, oral or written, between the Parties or their representatives. Should Seller require a EULA, TOS, or similar legal instrument or agreement through an "I agree" type click box or other comparable mechanism (such as "click-wrap" or "browse-wrap" agreements) to access any product provided pursuant to this Order, the terms of such EULA, TOS, or similar legal instrument or agreement shall not have the effect of, or be interpreted as, modifying, supplementing, or otherwise altering this Order or binding the Buyer or any end user acting on behalf of the Buyer or the Government. No modification of this Order or waiver or addition to any of its terms and conditions will be binding upon either Party unless made in writing and signed by the Parties' authorized representatives specifically designated in the Order.

32. ORDER OF PRECEDENCE

Unless otherwise specified, for any inconsistency between the Order, these terms and conditions, or the specifications and drawings, the inconsistency shall be resolved by giving precedence in the following order:

- (a) The Order document, including the applicable terms and conditions of purchase referenced therein;
- (b) Product drawings/specification/SS prefix documents;
- (c) Quality assurance specifications and standards;
- (d) Applicable federal, military, industrial or technical society material/process specifications and standards; and
- (e) Equipment manufacturer's operating procedures.

In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer, and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller must consult Buyer before proceeding. Buyer's written direction shall then govern.

33. EMPLOYEE CONCERNS PROGRAM.

The Department of Energy Employee Concerns Program (ECP) encourages the free and open expression of employee concerns and provides DOE federal, contractor, and subcontractor employees with an independent avenue to raise any concern related, but not limited, to the environment, safety, health, and management. The ECP office is within the Office of Environment, Health, Safety and Security (EHSS). Additional ECP information can be located at: https://powerpedia.energy.gov/wiki/Employee_Concerns_Program.

33. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent rules and regulations and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits.

Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

34. INTEGRITY

Seller, its employees, agents, or representatives shall not provide, directly or indirectly, any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind to Buyer employees in any way related to this subcontract directly or indirectly. A breach of this provision will be deemed a material breach of this Contract and grounds for termination of this Contract.

35. FAR AND DEAR CLAUSES/PROVISIONS & GOVERNMENT DIRECTIVES INCORPORATED BY REFERENCE

This Order incorporates one or more FAR and DEAR provisions/clauses by reference with the same force and effect as if they were given in full text. For FAR and DEAR provisions incorporated by reference, "Government" means "Buyer", "Contractor" means "Seller," "Contracting Officer" means "Buyer's Purchasing Representative," and "Subcontractor" means "Seller's Subcontractor" (unless expressly set forth otherwise below). DOE Directives incorporated by reference are available online at directives.doe.gov. The words "Government" and "rights Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2; (2) when title to subcontractor property is to be transferred directly to the Government; and (3) when information, data, and/or reports are to be transferred directly to the Government. Nothing in this Order grants Seller a direct right of action against the Government. Such provisions/clauses are identified below and elsewhere in this Order by their title, effectivity date, and reference where they appear in the FAR and/or DEAR.

This Order may be subject to additional FAR and DEAR clauses/provisions and government directives incorporated in to the Buyer's Prime Contract at a later date from this document's publication. These additional clauses will only be applicable for future orders placed after the initial effective date. A list of these additional applicable clauses can be located at: <https://supplier.kcncs.doe.gov/ptl/general-information> under *Contract Language, Terms & Conditions (Current)*, 1612 Supplemental

Applicable to all Orders, regardless of amount:

FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)
FAR 52.204-10	Reporting Executive Compensation and First Tier Subcontract Awards "(The usual substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.) (October 2016)
FAR 52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018)
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (JUL 2018)
FAR 52.219-8	Utilization of Small Business Concerns (OCT 2018)
FAR 52.222-4	Contract Work Hours and Safety Standards Act--Overtime Compensation (MAY 2014)
FAR 52.222-21	Prohibition of Segregated Facilities (APR 2015)
FAR 52.222-26	Equal Opportunity (SEP 2016)
FAR 52.222-50	Combating Trafficking in Persons (with ALT I as applicable) (JAN 19)
FAR 52.225-1	Buy American – Supplies (MAY 2014)

FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)
FAR 52.227-3	Patent Indemnity (APR 1984)
FAR 52.227-14	Rights in Data-General (with ALT V and modified in accordance with 927.409(a)) (MAY 2014) FAR
52.242-15	Stop Work Order (AUG 1989)
FAR 52.244-6	Subcontracts for Commercial Items (AUG 2019)
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)
DEAR 952.247-70	Foreign Travel (JUN 2010)
DEAR 970.5245-1	Property (AUG 2016); "Government" remains unchanged
DOE O 206.1	Department of Energy Privacy Program (JAN 2009)
DOE O 471.3	Identifying and Protecting Official Use Only Information (JAN 2011)

Applicable to all orders regardless of amount:

...if funded under the Recovery Act

FAR 52.203-15	Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010)
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...in all subcontracts except those for COTS items in which Seller may have Federal contract information residing in or transiting through its information system:

FAR 52.204-21	Basic Safeguarding of Covered Contractor Information Systems (JUN 2016)
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...in all service contracts subject to the Service Contract Labor Standards Statute:

FAR 52.222-41	Service Contract Labor Standards (MAY 2014)
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...in all service contracts subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the US:

FAR 52.222-55	Minimum Wages Under Executive Order 13658 (DEC 2015)
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706 (JAN 2017)

...if design, development or operation of a system of records on individuals is required to accomplish an agency function:

FAR 52.224-1	Privacy Act Notification (APR 1984)
FAR 52.224-2	Privacy Act (APR 1984)

...if subcontractor employees will: (1) Have access to a system of records, (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) Design, develop, maintain, or operate a system of records:

FAR 52.224 -3	Privacy Training (JAN 2017)
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...if FAR 52.224-3 is applicable and the agency specifies that only its agency-provided training is acceptable:

FAR 52.224 -3 ALT I	Privacy Training (JAN 2017)
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...for subcontracts that may involve making unclassified information about nuclear technology available to sensitive foreign nations:

DEAR 952.204-71	Sensitive Foreign Nations Controls (MAR 2011)
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...if any contract work is subcontracted in accordance with FAR 48 CFR 52.227-3:

DEAR 970.5227-6	Patent Indemnity – Subcontracts (DEC 2000)
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...if real property will be delivered or acquired:

DEAR 952.217-70	Acquisition of Real Property (MAR 2011)
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...if work is to be performed on a DOE site:

FAR 52.204-9	Personal Identity Verification of Contractor Personnel (JAN 2011)
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...if complex or hazardous work is to be performed on a DOE owned or leased facility:

DEAR 970.5223-1	Integration of Environment, Safety, And Health into Work Planning and Execution (DEC 2000)
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...if for protective services or other services performed on the DOE owned site which will affect the continuity of operation of the facility:

DEAR 970.5222-1 Collective Bargaining Agreements—Management and Operating Contracts (DEC 2000);
Applicable to all subcontracts for protective services or other services performed on the
DOE-owned site which will affect the continuity of operation of the facility

...if an uncleared contractor requires physical access to an NNSA site, logical access to NNSA Information Technology systems (including remote access), or a combination of both for greater than 179 days:

NNSA SD 206.2 Implementation of Personal Identity Verification for Uncleared Contractors (APR 2018)

...for all subcontracts that are subject to the provisions of 10 CFR part 707 which applies to DOE contractors and subcontractors performing work at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, and to individuals with unescorted access to the control areas of certain DOE reactors:

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2010)

...if energy-consuming products will be delivered or acquired:

FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (DEC 2007)

DEAR 952.204-77 Computer Security (AUG 2006)

...if printing (as defined in Title I of the U.S. Government Printing and Binding Regulations) is required:

DEAR 970.5208-1 Printing (DEC 2000)

...if experimental, developmental, or research work will be performed by a small business firm or domestic nonprofit organization:

DEAR 952.227-11 Patent Rights – Retention by the Contractor (short form) (MAR 1995); As flowed down
herein “Contractor” shall mean “Seller”

...if experimental, developmental, or research work will be performed and the subcontract does not contain 952.227-11:

DEAR 952.227-13 Patent Rights – acquisition by the Government (DEC 2007); As flowed down herein
“Contractor” shall mean “Seller”

...if FAR 52.227-14 applies *and* experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract

FAR 52.227-16 Additional Data Requirements (JUN 1987)

...if the subcontract involves research work:

DEAR 952.235-71 Research Misconduct (JUL 2005)

DEAR 970.5227-3 Technology Transfer Mission (Aug 2002) Alternate II (DEC 2000) (NNSA Class Deviation
Oct 2011)

...replaces FAR 52.227-14 if the subcontract, including subcontracts for related support services, involves the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under Buyer’s contract with DOE *and* technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data:

DEAR 970.5227-1 Rights in Data – Facilities (DEC 2010)

...if the amount of royalties reported during negotiation of the subcontract exceeds \$250:

DEAR 970.5227-8 Refund Of Royalties (AUG 2002)

...if supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or, if other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States:

FAR 52.225-8 Duty-Free Entry (OCT 2010)

...in all subcontracts that will be performed outside the US in areas of – (1) Combat operations, as designated by the Secretary of Defense; or (2) Other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area:

FAR 52.225-26 Contractors Performing Private Security Functions Outside the United States (OCT 2016)

...if the subcontractor is a small business:

FAR 52.232-40 Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)

...in all subcontracts likely to included classified subject matter:

FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter (DEC 2007)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

DEAR 970.5204-1 Counterintelligence (DEC 2010), Paragraph (a) only

...when work involves access to classified information, special nuclear material or authorized unrestricted access to areas containing these:

DEAR 952.204-2 Security (MAR 2011) Class Deviation (OCT 2013)

...for any contract that involves access to Unclassified Controlled Nuclear Information:

DOE O 471.1B Identification and Protection of Unclassified Controlled Nuclear Information

...if seller is required to have DOE controlled or protected information, technologies, or equipment at their facilities or on their systems

DOE O 142.3A Unclassified Foreign Visits and Assignments Program

...if Seller will be required to process, discuss, or store Classified Information, Sensitive but Unclassified (SBU) Information, or Controlled Unclassified Information (CUI)

DOE O 470.6 Technical Security Program

... and If the subcontractor will be required to handle or store Government Owned Data on their systems:

NIST SP 800-171 Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations

...when work may generate classified information, documents or material:

DOE O 475.2B Identifying Classified Information

...if involving international air transportation:

FAR 52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003)

...if involving ocean transportation of supplies subject to the Cargo Preference act of 1954:

FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)

...if performance involves risk of public liability for a nuclear incident or precautionary evacuation and Seller is not subject to Nuclear Regulatory Commission (NRC) financial protection requirements or NRC indemnification:

DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (AUG2016).

...when a major helium requirement is involved:

FAR 52.208-8 Required Sources for Helium and Helium Usage Data (APR 2014)

Applicable if the Order exceeds \$3,500, is not a COTS item and includes work to be performed in the United States:

FAR 52.222-54 Employment Eligibility Verification (OCT 2015)

Applicable if the Order exceeds the Micro-Purchase Threshold:

FAR 52.223-18 Encouraging Contractor policies To Ban Text Messaging While Driving (AUG 2011)

Applicable if the Order exceeds \$10,000 and will be performed wholly or partially in the United States:

FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)

Applicable if the Order exceeds \$15,000:

FAR 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014)

FAR 52.222-36 Equal Opportunity for Workers with Disabilities (JUL 2014)

Applicable if the Order exceeds \$100,000 and is for research and development activities:

DEAR 970.5227-4 Authorization and Consent (AUG 2002)
DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

Applicable if the Order exceeds \$150,000:

FAR 52.203-7 Anti-Kickback Procedures (excepting paragraph (c)(1)) (MAY 2014)
FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)
FAR 52.222-35 Equal Opportunity for Veterans (OCT 2015)
FAR 52.222-37 Employments Reports on Veterans (FEB 2016)

...and subcontractor employees will perform acquisition functions closely associated with inherently governmental functions:

FAR 52.203-16 Preventing Personal Conflicts of Interest (DEC 2011)

Applicable if the Order exceeds the SAT:

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006)
FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (APR 2014)
FAR 52.227-1 Authorization and Consent (DEC 2007)

...and is for services:

FAR 52.222-17 Non-displacement of Qualified Workers (MAY 2014)

...and involves the performance of advisory and assistance services:

DEAR 952.209-72 Organizational Conflicts Of Interest (AUG 2009), ALTERNATE I. (b)(1)(i) Period is 'five (5) years'

...and support operations of the DOE facility and offers significant subcontracting opportunities for energy efficient or environmentally sustainable products or services:

DEAR 952.223-78 Sustainable Acquisition Program (OCT 2010)

Applicable if the Order exceeds \$500,000:

DEAR 952.226-74 Displaced employee hiring preference (JUN 1997)
DEAR 970.5226-2 Workforce restructuring under section 3161 of the National Defense Authorization Act for fiscal year 1933 (only applies to workforce changes at a Department of Energy Defense Nuclear Facility) (DEC 2000)

...and is for services:

FAR 52.204-14 Service Contract Reporting Requirements (OCT 2016)

Applicable if the Order exceeds \$700,000, and the subcontractor is not a small business:

FAR 52.219-9 Small Business Subcontracting Plan (AUG 2018)

Applicable if the Order exceeds \$2,000,000 and a certificate of current cost or pricing data is required in connection with initial award or any subsequent modification:

FAR 52.215-2 Audit Records – Negotiation (OCT 2010)
FAR 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data (AUG 2011)
FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data – Modifications (AUG 2011)
FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (OCT 2010)
FAR 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (OCT 2010)
FAR 52.215-15 Pension Adjustments and Asset Reversions (OCT 2010)
FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)
FAR 52.215-19 Notification of Ownership Changes (OCT 1997)
FAR 52.230-subc2 Cost Accounting Standards (MAY 2014)
FAR 52.230-6 Administration of Cost Accounting Standards (JUN 2010)

Applicable if the Order exceeds \$5,500,000,

FAR 52.203-14 Display of Hotline Poster(s) (OCT 2015)

...and has a performance period of more than 120 days:

FAR 52.203-13

Contractor Code of Business Ethics and Conduct (In Paragraph (b)(3)(i), the meaning of "agency office of the Inspector General" and "Contracting Officer" do not change, in Paragraph (b)(3)(ii) the meaning of "Government" does not change, and in Paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meaning of "OIG of the ordering agency", "IG of the agency" "agency OIG" and "Contracting Officer" do not change.) (OCT 2015)