USAID | BANGLADESH
FROM THE AMERICAN PEOPLE

Dhaka, Bangladesh

April 26, 2016

Dear Prospective Offeror:

Subject: Solicitation for Short-Term Program and Project Advisor

The United States government, represented by the U.S. Agency for International Development (USAID), invites qualified companies/individuals to submit proposals **for Short-Term Program and Project Advisor**
The Request for Proposals (RFP) consists of the following sections:

1. Technical Proposal
2. Financial Proposal

You are encouraged to make your quote competitive. Also, you are cautioned against any collusion with other potential offerors in regard to proposals to be submitted.

Proposal submissions under this RFP can be sent via email to dhakaprocurement@usaid.gov. Your proposal must be accompanied by brief introduction letter about your company.

The award of a contract hereunder is subject to the availability of funds. Issuance of this RFP does not constitute an award or commitment on the part of the U.S. Government, nor does it commit the U.S. Government to pay for costs incurred in the preparation and submission of a proposal. RFPs are due on or before May 17, 2016.

DESIGNATED OFFICE:
Executive Office
USAID/Bangladesh, Executive Office
U.S. Embassy
Madani Avenue, Baridhara
Dhaka-1212, Bangladesh
E-mail: dhakaprocurement@usaid.

We look forward to receiving your RFP and thank you in advance for your interest in USAID/Bangladesh procurement opportunities.

Sincerely,

Cheryl Davis
Executive Officer

3. Enclosure: Standard Form SF-18
4. Scope of Work/Bid Schedule

REQUEST FOR QUOTATIONS *(THIS IS NOT AN ORDER)*	THIS RFQ [ ] IS [**x**] IS NOT A SMALL BUSINESS-SMALL PURCHASE SET-ASIDE (52.219-4)	PAGE 2	OF 1	PAGES 16

1. REQUEST NO.	2. DATE ISSUED	3. REQUISITION/PURCHASE REQUEST NO.	4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1	RATING
	26 April, 2016			

5A. ISSUED BY **The Executive Office, USAID Bangladesh, US Embassy, Baridhara, Dhaka-1212**	6. DELIVER BY *(Date)*
5B. FOR INFORMATION CALL: *(Name and telephone no.) (No collect calls*	7. DELIVERY
NAME **Md. Mustafizur Rahman – Procurement Specialist** / TELEPHONE NUMBER: AREA CODE / NUMBER **5566-2332**	☐ FOB DESTINATION ☐ OTHER *(See Schedule)*

8. TO:			9. DESTINATION	
a. NAME	b. COMPANY		a. NAME OF CONSIGNEE	
c. STREET ADDRESS			b. STREET ADDRESS	
d. CITY	e. STATE	f. ZIP CODE	c. CITY	
			d. STATE	e. ZIP CODE

10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE IN BLOCK 5A ON OR BEFORE CLOSE OF BUSINESS *(Date)* **05/17/2016**	**IMPORTANT:** This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it to the address in Block 5A. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this quotation or to contract for supplies or services. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotations must be completed by the quoter

11. SCHEDULE *(Include applicable Federal, State and local taxes)*

ITEM NO. (a)	SUPPLIES/SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)
X	**Offer/Quote Solicitation for Short-Term Program and Project Advisor** **Please see attached for details.**				

12 DISCOUNT FOR PROMPT PAYMENT	a. 10 CALENDAR DAYS %	b. 20 CALENDAR DAYS %	c. 30 CALENDAR DAYS %	d. CALENDAR DAYS NUMBER	%

NOTE: Additional provisions and representations [ ] are [ ] are not attached.

13 NAME AND ADDRESS OF QUOTER			14 SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	15 DATE OF QUOTATION
a. NAME OF QUOTER				
b. STREET ADDRESS			16. SIGNER	
c. COUNTY			a. NAME (Type or print)	b. TELEPHONE
d. CITY	e. STATE	f. ZIP CODE	c. TITLE (Type or print)	AREA CODE NUMBER

A. TITLE

Solicitation for Short-Term Program and Project Advisor

B.1 BACKGROUND

The United States Agency for International Development (USAID) office in Dhaka, Bangladesh, is a US Government Agency that gives assistance in social, economic and humanitarian activities in Bangladesh.

B.2 OBJECTIVES

USAID/Bangladesh is seeking an experienced firm/individual with the ability to provide Advisory service as Short-Term Program and Project Advisor.
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B. REQUIREMENTS:

- Please see the attached SOW

C. Submission deadline:

Offers must be submitted to USAID Bangladesh (by email to: dhakaprocurement@usaid.gov) or by post/hand by close of business May 17, 2016

D. PAYMENT TERMS

Full payment shall be made to the vendor upon receipt and acceptance of deliverables by USAID/Bangladesh, and receipt of a valid invoice. Payment will be made per the actual invoice (with supporting) and through Prompt Pay act (within 30 days after receiving the proper invoice and by EFT or Check) Invoice should be submitted through the following email address:

paymentsdhaka@usaid.gov

E. DURATION

Until September, 2016

F. EXECUTIVE ORDER ON TERRORISM FINANCING

The Contractor/Recipient is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the contractor/recipient to ensure compliance with these Executive Orders and laws. This provision must be included in all subcontracts/sub-awards issued under this contract/agreement.

G. AUTHORIZED GEOGRAPHIC CODE

The authorized geographic code for procurement of goods and service under this Purchase order is 937.

H. CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (FEB 2012)

(a) *Inspection/Acceptance*. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights --

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment*. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes*. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes*. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions*. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice*.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include --

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt Payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period at fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes*. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq*., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence*. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Central Contractor Registration (CCR).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to:

(A) Change the name in the CCR database;

(B) Comply with the requirements of Subpart 42.12 of the FAR;

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via CCR accessed through https://www.acquisition.gov or by calling 1-888-227-2423, or 269-961-5757.

I. NOTICE LISTING CLAUSES INCORPORATED BY REFERENCE

The following clauses are hereby incorporated by reference (by Citation Number, Title, and Date) in accordance with the clause at FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE " contained in this document. FAR 52.252-2 contains the internet address for electronic access to the full text of a clause.

FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1)

NUMBER	TITLE	DATE
52.203-2	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION	APR 1985
52-203-3	GRATUITIES	APR 1984
52-203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	APR 2010
52-204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	AUG 2012
52.207-1	NOTICE OF STANDARD COMPETITION	MAY 2006
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS	MAY 2012
52.212-4	CONTRACT TERMS AND CONDITIONS	JUN 2010
52.212-5	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS COMMERCIAL ITEMS	OCT 2010
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES	FEB 1997
52.222-3	CONVICT LABOR	JUNE 2002
52.222-19	CHILD LABOR – COOPERATION WITH AUTHORITIES AND REMEDIES	JUL 2010
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999
52.222-26	EQUAL OPPORTUNITY	MAR 2007
52.222-35	EQUAL OPPORTUNITY FOR VETERANS	SEP 2010
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	OCT 2010
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING	SEP 2010
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES DISABILITIES	JUN 2008
52-239-1	PRIVACY OR SECURITY SAFEGUARDS	AUG 1996
52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S FLAG COMMERCIAL VESSEL	FEB 2006

52.222-53	EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACTS FOR CERTAIN SERVICES – REQUIREMENTS	FEB 2009
52.213-4	TERMS AND CONDITIONS –SIMPLIFIED ACQUISITION	FEB 2009
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR LABPR DISPUTES	FEB 1997
52.222-42	STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRE	MAY 1989
52.222-6	DRUG FREE WORKPLACE	MAY 2001
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.237-1	SITE VISIT	APR 1984
52.237-2	PROTECTION OF GOVERNMENT BUILDING, EQUIPOMENTS AND VEGETATION	APR 1984
52.243-1	CHANGES- FIXED PRICE ALTERNATE	AUG 1987

J. NOTICE LISTING CLAUSES INCORPORATED BY REFERENCE

The following clauses pertinent to this section are hereby incorporated by reference (by Citation Number, Title, and Date) . The internet address to view the full text of the AIDAR is http://www.usaid.gov/ads/300/aidar.pdf

NUMBER	TITLE	DATE
752.202-1	USAID DEFINITIONS CLAUSE – SUPPLEMENT FOR USAID	DEC 1986
752.209-71	CONTRACTS INVOLVING PERFORMANCE OVERSEAS ORGANIZATGION CONFLICT OF INTEREST DISCOVERED AFTER AWARD	JUN 1993
752.211-70	LANGUAGE AND MEASUREMENT	JUN 1992
752.225-70	SOURCE ORIGIN AND NATIONALITY REQUIREMENTS	FEB 1997
752.225-71	LOCAL PROCUREMENT	FEB 1997
752.7002	TRAVEL AND TRANSPORTATION	JAN 1990
752.227-14	RIGHTS IN DATA – GENERAL	OCT 2007
752.228-70	MEDICAL EVACUATION (MEDVAC) SERVICES	JUL 2007
752.7008	USE OF GOVERNMENT FACILITIES OR PERSONNEL	APR 1984
752.7010	CONVERSION OF U.S DOLLARS TO LOCAL CURRENCY	APR 1984
752.7013	CONTRACTOR-MISSION RELATIONSHIP	OCT 1989

752.7025	APPROVALS	APR 1984
752.7027	PERSONNEL	DEC 1990
752.7009	MARKING	JAN 1993
752.7032	INTERNATIONAL TRAVEL APPROVAL AND NOTIFICATION REQUIREMENTS	JAN 1990
752.7033	PHYSICAL FITNESS	JULY 1997

K. CONTRACT CLAUSES

52.212-4, CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS, BY REFERENCE

52. 202-1	DEFINITIONS
52.203-5	COVENANT AGAINST CONTINGENT FEES
52-203-7	ANTI-KICKBACK PROCEDURES
52-203-8	CANCELLATION, RESCISSION AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.212-2	EVALUATION
52.212-5	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUES AND EXECUTIVE ORDERS
52.216-24	LIMITATION OF GOVERNMENT LIABILITY
52-216-25	CONTRACT DEFINITIZATION
52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.225-25	PROHIBITION TO CONTRACTING WITH ENTITIES ENGAGING IN SANCTIONED ACTIVITIES RELATING TO IRAN – REPRESENTATION AND CERTIFICATION
52.229-6	TAXES – FOREIGN FIXED-PRICE CONTRACTS
52.232-25	PROMPT PAYMENT
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION
52.233-2	SERVICE OF PROTEST
52.233-3	PROTEST AFTER AWARD
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS
52.247.63	PREFERENCE FOR US-FLAG AIR CARRIERS

L. SUBPART 12.4 -- UNIQUE REQUIREMENTS REGARDING TERMS AND CONDITIONS FOR COMMERCIAL ITEMS

12.401 -- GENERAL.

This subpart provides --

(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212-4, Contract Terms and Conditions -- Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in 52.212-4 differ substantially from those contained elsewhere in the FAR.

12.402 -- ACCEPTANCE.

(a) The acceptance paragraph in 52.212-4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the post award remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available post award remedies (see 12.404).

(c) The acquisition of commercial items under other circumstances such as on an "as is" basis may also require acceptance procedures different from those contained in 52.212-4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

12.403 -- TERMINATION.

(a) *General.* The clause at 52.212-4 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in 52.212-4 entitled "Termination for the Government's Convenience" and "Termination for Cause" contain concepts which differ from those contained in the termination clauses prescribed in Part 49. Consequently, the requirements of Part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures in this section. Contracting officers may continue to use Part 49 as guidance to the extent that Part 49 does not conflict with this section and the language of the termination paragraphs in 52.212-4.

(b) *Policy.* The contracting officer should exercise the Government's right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause.*

(1) The paragraph in 52.212-4 entitled "Excusable Delay" requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government's rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess re-procurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall --

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

(iii) Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see 33.211).

(4) The contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with 42.1503(f).

(d) *Termination for the Government's convenience.*

(1) When the contracting officer terminates a contract for commercial items for the Government's convenience, the contractor shall be paid --

(i) (A) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination for fixed-price or fixed-price with economic price adjustment contracts, or

(B) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rates(s) in the Schedule; and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in Part 31. The Government does not have any right to audit the contractor's records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

12.404 -- WARRANTIES.

(a) *Implied warranties.* The Government's post award rights contained in 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when--

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties.* The Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 264 note) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if --

(i) The warranty is adequate to protect the needs of the Government, *e.g.*, items covered by the warranty and length of warranty;

(ii) The terms allow the Government effective post award administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and

(iii) The warranty is cost-effective.

(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212-4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

(3) Express warranties shall be included in the contract by addendum (see 12.302).

M. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) FULL TEXT CLAUSES

Not applicable