

Part 37 – Service Contracting

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37.000 Scope of part.

This part prescribes policy and procedures specific to the acquisition and management of services by contract. This part applies to all contracts and orders for services regardless of the contract type or kind of service being acquired.

37.001 Definition.

Service contract, as used in this part, means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis.

Subpart 37.1 - Performance-Based Acquisition

37.101 Presolicitation.

37.101-1 Policy.

When acquiring services, including acquisition of commercial services using the procedures in part 12, agencies must—

(a) Use performance-based acquisition methods to the maximum extent practicable, except for—

(1) Architect-engineer services acquired in accordance with 40 U.S.C. 1101 *et seq.* (see part 36);

(2) Construction (see part 36);

(3) Utility services (see part 41); or

- (4) Services that are incidental to supply purchases; and
- (b) Use the following order of precedence (Public Law 106-398, section 821(a)):
 - (1) A firm-fixed price performance-based contract or task order.
 - (2) A performance-based contract or task order that is not firm-fixed price.
 - (3) A contract or task order that is not performance-based.

37.102 Evaluation and award.

37.102-1 Procedures.

- (a) Performance-based contracts must include a performance work statement (PWS).
 - (1) The PWS may be prepared by the Government or proposed by an offeror in response to a statement of objectives (SOO)(see 2.101) and included in the contract. While the SOO in a solicitation may be used to guide the development of the PWS, the SOO does not become part of the contract.
 - (2) The PWS must describe the outcome required rather than “how” that outcome is to be achieved or the estimated level of effort anticipated.
 - (3) The PWS must, to the maximum extent practicable, include meaningful and measurable performance standards. Such standards may be established by the Government or proposed by the offeror.
- (b) When an offeror proposes performance standards in response to a SOO, agencies must—
 - (1) Evaluate whether the proposed standards meet agency needs;
 - (2) Identify methods for assessing contractor performance against the standards; and
 - (3) Incorporate both the accepted standards and assessment methods into the contract.

Subpart 37.2 - Personal Services

37.201 Presolicitation.

37.201-1 Policy.

Agencies must not contract for personal services unless specifically authorized by statute (e.g., 5 U.S.C. 3109).

37.201-2 Characteristics of personal services contracts.

(a) A personal services contract exists when the Government supervises or controls contractor employees, or appears to do so, as if they were Government employees. This type of contract circumvents civil service laws that require the Government to competitively hire and appoint its own employees.

(b) The Government exercising relatively continuous supervision and control over multiple contractor personnel is frequently a key indicator of a personal services contract. However, judgment is required because service contracts often involve interaction with contractor employees—such as ordering and reviewing specific work—that do not constitute the type of supervision or control that would convert a contractor employee into a Government employee.

37.202 Postaward.

37.202-1 Avoiding personal services contracts.

When administering contracts, agencies must avoid making contractor personnel appear to be, in effect, Government employees, unless a statute provides otherwise.

Subpart 37.3 - Inherently Governmental Functions

37.301 Presolicitation.

37.301-1 Policy.

(a) Agencies must not award a contract for the performance of an inherently governmental function (see part 7).

(b) Service contracts require special oversight if the contract work:

(1) Supports an inherently governmental function, including contracts providing recommendations, analyses, reports, or similar work products that can influence government decision-making; or

(2) May approach becoming inherently governmental because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance.

(c) Agencies must carefully develop requirements for such work to ensure contracted functions do not expand into inherently governmental functions.

37.302 Postaward.

37.302-1 Contractor support to inherently governmental functions.

Agencies must actively administer contracts to ensure contract functions do not expand into inherently governmental functions, including—

- (a) Assigning sufficient qualified Government employees to actively oversee contractor work and monitor for potential encroachment on inherently governmental functions, particularly when the work supports Government policy or decision-making.
- (b) Requiring contractor personnel to identify themselves as contractors when attending meetings, answering government phones, or in any situation where their status might be unclear to the public or Congress, unless the agency determines no confusion or harm would result.
- (c) Ensuring contractor-produced documents are clearly marked as contractor products or include appropriate disclosure of contractor involvement.

Subpart 37.4 - Advisory and Assistance Services

37.401 Definition.

Covered personnel, as used in this subpart, means—

- (1) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity:
 - (i) The President;
 - (ii) A Member of Congress;
 - (iii) A member of the uniformed services;
 - (iv) An individual who is an employee under 5 U.S.C. 2105;
 - (v) The head of a Government-controlled corporation; or
 - (vi) An adjutant general appointed by the Secretary concerned under 32 U.S.C. 709(c).
- (2) A member of the Armed Services of the United States.
- (3) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

37.402 Presolicitation.

37.402-1 Policy.

When essential to the agency's mission, agencies may contract for advisory and assistance services (A&AS) to obtain—

- (a) Management and professional support services;
- (b) Studies, analyses, and evaluations (see 37.402-3 for limitations on evaluative work);
or
- (c) Engineering and technical services.

37.402-2 Prohibitions.

A&AS contracts must not be awarded for purposes of—

- (a) Performing work of a policy-making, decision-making, or managerial nature which is the direct responsibility of agency officials;
- (b) Bypassing or undermining personnel ceilings, pay limitations, or competitive employment procedures;
- (c) Aiding in influencing or enacting legislation; or
- (d) Obtaining professional or technical advice which is readily available within the agency or another Federal agency.

37.402-3 A & AS contracts for the evaluation of proposals.

Agencies must not contract for A & AS to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—

(a) The head of the agency has determined covered personnel with the required training and capabilities to perform the evaluation or analysis are not readily available in the agency or from another Federal agency (41 U.S.C. 1709).

(1) The head of the agency may consider the associated administrative burden when assessing the feasibility of using covered personnel from other agencies. Such considerations may include—

- (i) The time and cost associated with searching for suitable personnel;
- (ii) Potential travel costs;
- (iii) The amount of such costs in relation to the acquisition value; and
- (iv) Potential competing demands for the personnel in meeting the agency's mission.

(2) The contracting officer must ensure, to the maximum extent practicable, any such determination is made prior to issuing the solicitation and in accordance with agency procedures. Once the solicitation is released, any determination of a need for A&AS support in analyzing proposals for the initial contract award must be made prior to granting the A&AS contractor access to any proposal material.

(b) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in 41 U.S.C. 1709(c) and the work placed under the FFRDC's contract meets the criteria of part 35; or

(c) Such functions are otherwise authorized by law.

37.402-4 Exclusions.

The following activities and programs are excluded or exempted from the definition of A&AS:

(a) Routine information technology services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

(b) Architectural and engineering services as defined in 40 U.S.C. 1102.

(c) Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.

37.403 Evaluation and award.

37.403-1 Treatment of former Government employees.

Agencies must ensure A&AS is not contracted for on a preferential basis to former Government employees.

37.403-2 Avoiding A & AS use in evaluation of proposals.

When evaluating proposals for initial contract award, agencies must not use A & AS to support evaluation unless the conditions at 37.402-3 are satisfied.

37.404 Postaward.

37.404-1 Performance monitoring in A & AS contracts.

(a) Agencies must administer A & AS contracts with sufficient oversight to ensure prohibited practices at 37.402-2 are not performed.

(b) Agencies must not pay for A & AS evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless the conditions at 37.402-3 are satisfied.

Subpart 37.5 - Child Care Services

37.501 Definition.

Child care services, as used in this subpart, means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

37.502 Presolicitation.

37.502-1 Policy.

Ensure that contracts for nonpersonal child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 34 U.S.C. 20351 and agency procedures.

Subpart 37.6 - Nonpersonal Health care services

37.601 Presolicitation.

37.601-1 Policy.

Agencies must ensure nonpersonal health care services contracts with physicians, dentists and other health care providers include indemnification and medical liability insurance.

37.601-2 Procedures.

To ensure adequate medical liability insurance is obtained, the contracting officer must insert the necessary value(s) in paragraph (a) of contract clause 52.237-7. Agencies determine the value(s) by considering the standard coverage prevailing within the local community for the specific medical specialty, or a higher amount if necessary to protect the Government's interests.

37.601-3 Contract clause.

Insert the clause at 52.237-7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services.

37.602 Evaluation and award.

37.602-1 Evidence of insurability.

Before making award, the contracting officer must obtain proof that the apparent successful offeror will be able to obtain the required medical liability insurance (e.g., letter of intent from a reputable insurer, underwriting approval letter).

37.603 Postaward.

37.603-1 Evidence of insurance.

After contract award, but before performance begins, the contracting officer must obtain proof that the contractor holds an active policy for the required medical liability insurance.

Subpart 37.7 - Dismantling, Demolition, or Removal of Improvements

37.701 Presolicitation.

37.701-1 Labor standards.

Contracts for dismantling of buildings, ground improvements, and other real property structures and for the removal of such structures or a portion of them (hereafter referred to as *dismantling, demolition, or removal of improvements*) must comply with one of two labor standards statutes. Service Contract Labor Standards (41 U.S.C. chapter 67) apply when the contract is solely for dismantling, demolition, or removal. However, if the Government plans any follow-on construction, alteration, or repair work of a public building or public work at the same location—even under a separate contract—then the Construction Wage Rate Requirements (40 U.S.C. chapter 31, subchapter IV) apply (see part 22).

37.701-2 Bonds or other security.

The standard bonding requirements (see part 28) in 40 U.S.C. chapter 31, subchapter III do not apply to contracts solely for dismantling, demolition, or removal of improvements. However, the contracting officer may require the contractor to furnish a performance bond or other security in an amount that the contracting officer considers adequate to—

- (a) Ensure completion of the work;
- (b) Protect property to be retained by the Government;
- (c) Protect property to be provided as compensation to the contractor; and

(d) Protect the Government against damage to adjoining property.

37.701-3 Payments and title.

Agencies must structure contracts to carefully balance payment terms and title rights to protect the Government's interests.

(a) Contracts for dismantling or demolition may be structured so that either the Government pays the contractor for performing the work, or the contractor pays the Government for the right to salvage and remove the resulting materials.

(b) The contracting officer must evaluate all salvageable property to determine its usefulness to the Government. When property is worth more to the Government than its salvage value to the contractor, the contract must specifically designate it for Government retention. For all other property, which the contractor will own, the contracting officer must determine its fair market value. This valuation affects both payment structure and any potential termination compensation.

37.701-4 Solicitation provisions and contract clauses.

(a) Insert the clause at 52.237-4, Payment by Government to Contractor, in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government must make payment to the contractor in addition to any title to property that the contractor may receive under the contract. If the contracting officer determines that all material resulting from the dismantling or demolition work is to be retained by the Government, use the basic clause with its Alternate I.

(b) Insert the clause at 52.237-5, Payment by Contractor to Government in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments.

(c) Insert the clause at 52.237-6, Incremental Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if—

(1) The contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government; and

(2) The contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments (e.g., to encourage greater competition or participation of small business concerns), and for the Government to transfer title to the contractor for increments of property only upon receipt of those payments.

Subpart 37.8 - Other Service Considerations

37.801 Definitions.

As used in this subpart—

Adjusted hourly rate (including uncompensated overtime) is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week which includes uncompensated overtime hours over and above the standard 40-hour work week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ($\$20.00 \times 40/45 = \17.78).

Uncompensated overtime means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave must be included in the normal work week for purposes of computing uncompensated overtime hours.

37.802 Presolicitation

37.802-1 Uncompensated overtime.

Agencies must ensure solicitations do not incentivize the use of uncompensated overtime (10 U.S.C. 4507).

37.802-2 Services of quasi-military armed forces.

Agencies must not contract with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract's character (5 U.S.C. 3108). An organization providing guard or protective services is not considered a quasi-military armed force, even though the guards are armed or the organization provides general investigative or detective services.

37.802-3 Foreign national severance cost limitations.

(a) Part 31 specifies cost allowability limitations for severance payments to foreign nationals under service contracts outside the United States. However, agencies may

waive or except the cost limitations in certain circumstances (see 10 U.S.C. 3744 and 41 U.S.C. 4304).

(b) Waivers.

(1) The head of the agency may waive such severance cost limitations when the contract—

- (i) Provides significant support services for members of the armed forces stationed or deployed outside the United States; or
- (ii) Provides significant support for employees of an executive agency posted outside the United States; and
- (iii) The head of the agency determines the conditions outlined in 52.237-8(b) are present.

(2) Waivers cannot be granted if the severance is a result of the curtailment or termination of basing rights of the United States military at the request of the host government (see part 31).

(3) Waivers may only be granted prior to contract award.

(c) Applicability. The Secretary of Defense may determine that the cost allowability limitations on severance do not apply in military banking contracts (10 U.S.C. 3744(a)(13) and (14)).

37.802-4 Use of private sector temporaries.

(a) Agencies may hire temporary help service firms to provide workers for short-term or occasional needs (5 U.S.C. 3109). These arrangements are not considered personal services contracts. However, agencies cannot use temporary help to avoid normal Federal hiring processes or replace existing Federal employees.

(b) All temporary help contracts must comply with the requirements in 5 CFR part 300, subpart E, Use of Private Sector Temporaries, and agency procedures.

(c) Contracting officers should consult with cognizant civilian personnel offices for expertise when exercising this authority.

37.802-5 Solicitation provisions and contract clauses.

(a) Insert the provision at 52.237-1, Site Visit, in solicitations for services to be performed on Government installations, unless the solicitation is for construction.

(b) Insert the clause at 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated.

(c) Insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) Insert the provision at 52.237-8, Restriction on Severance Payments to Foreign Nationals, in solicitations that meet the criteria in 37.802-3(b).

(e) Insert the clause at 52.237-9, Waiver of Limitation on Severance Payments to Foreign Nationals when the head of an agency has granted a waiver pursuant to 37.802-3(b).

(f) Insert the provision at 52.237-10, Identification of Uncompensated Overtime, in solicitations valued above the simplified acquisition threshold, for professional or technical services to be acquired on the basis of the level of effort rather than performance outcome required.

37.803 Evaluation and award.

37.803-1 Evaluating uncompensated overtime.

Agencies must ensure an offeror's use of uncompensated overtime will not degrade the level of technical expertise required to meet Government requirements. When offerors propose uncompensated overtime, contracting officers must assess potential risks posed, including by—

(a) Using adjusted hourly rates instead of standard hourly rates for all proposed hours;

(b) Reviewing whether unrealistically low labor rates or costs might lead to poor quality or inadequate service; and

(c) Examining whether uncompensated overtime is distributed unevenly across skill levels or concentrated in critical technical positions.

37.803-2 Funding and term of service contracts.

(a) Contracts funded by annual appropriations must not extend beyond the end of the fiscal year of the appropriation except when authorized (see part 32).

(b) The head of the agency may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year (10 U.S.C. 3133 and 41 U.S.C. 3902). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

(c) Agencies with statutory multiyear authority should consider the use of this authority to encourage and promote economical business operations when acquiring services.

Part 52 – Solicitation Provisions and Contract Clauses

[52.237 \[Reserved\]](#)

[52.237-1 Site Visit.](#)

[52.237-2 Protection of Government Buildings, Equipment, and Vegetation.](#)

[52.237-3 Continuity of Services.](#)

[52.237-4 Payment by Government to Contractor.](#)

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[52.237-6 Incremental Payment by Contractor to Government.](#)

[52.237-7 Indemnification and Medical Liability Insurance.](#)

[52.237-8 Restriction on Severance Payments to Foreign Nationals.](#)

[52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.](#)

[52.237-10 Identification of Uncompensated Overtime.](#)

52.237 [Reserved]

52.237-1 Site Visit.

As prescribed in 37.802-5(a), insert the following provision:

SITE VISIT (APR 1984)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)

52.237-2 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed in 37.802-5(b), insert the following clause in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated:

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

52.237-3 Continuity of Services.

As prescribed in 37.802-5(c), insert the following clause:

CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to-

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

52.237-4 Payment by Government to Contractor.

As prescribed in 37.701-4(a), insert the following clause in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract:

PAYMENT BY GOVERNMENT TO CONTRACTOR (APR 1984)

(a) In _____ [*insert "full" if Alternate I is used; otherwise insert "partial"*] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor _____ [*fill in amount*].

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) of this clause, in making progress payments the Contracting Officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer shall retain an amount considered adequate for the protection of the Government and, at the Contracting Officer's discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the Contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished after award, upon the Government's issuance of a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the

property. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government shall make final payment of the amount due the Contractor under this contract. If requested, the Contractor shall release all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)

Alternate I (Apr 1984). If the contracting officer determines that the Government shall retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

52.237-5 Payment by Contractor to Government.

As prescribed in 37.701-4(b), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments:

PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated in the Schedule as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished, upon the Government's issuing a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the

granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor shall perform the work called for under this contract and within _____ days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, shall pay _____ *[fill in amount]*. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(End of clause)

52.237-6 Incremental Payment by Contractor to Government.

As prescribed in 37.701-4(c), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements (a) if the Contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government; and (b) if the Contracting Officer determines that it would be advantageous to the Government for the Contractor to pay in increments, and for the Government to transfer title to the Contractor for increments of property, only upon receipt of those payment:

INCREMENTAL PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall perform the work called for under this contract and within ____ days of receipt of notice of award, unless otherwise provided in the Schedule, and before proceeding with the work, shall pay ____ *[fill in amount]*. Thereafter, the Contractor shall make payment to the Government in the amount and frequency specified in the Schedule. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(b) Upon the Government's receipt of each increment of payment, the Contractor shall receive title to such property as the Contracting Officer determines to be fair and reasonable for that increment of payment. Upon receipt of the Contractor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the

Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 37.601-3, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (DEVIATION DEC 2025)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

52.237-8 Restriction on Severance Payments to Foreign Nationals.

As prescribed in 37.113-2(a), use the following provision:

RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (DEVIATION DEC 2025)

(a) The Federal Acquisition Regulation (FAR), at 31.205-6(f)(6), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR 37.802-3 before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.

As prescribed in 37.802-5(e), use the following clause:

WAIVER OF LIMITATION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (DEVIATION
DEC 2025)

(a) Pursuant to 10 U.S.C. 3744(b) or 41 U.S.C. 4304(b)(1), as applicable, the cost allowability limitations in FAR 31.205-6(f)(6) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

52.237-10 Identification of Uncompensated Overtime.

As prescribed in 37.802-5(f), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME (MAR 2015)

(a) *Definitions.* As used in this provision-

Adjusted hourly rate (including uncompensated overtime) is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week which includes uncompensated overtime hours over and above the standard 40-hour work week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ($\$20.00 \times 40 \text{ divided by } 45 = \17.78).

Uncompensated overtime means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

(b) (1) Whenever there is uncompensated overtime, the adjusted hourly rate (including uncompensated overtime), rather than the hourly rate, shall be applied to all proposed hours, whether regular or overtime hours.

(2) All proposed labor hours subject to the adjusted hourly rate (including uncompensated overtime) shall be identified as either regular or overtime hours, by labor categories, and described at the same level of detail. This is applicable to all proposals whether the labor hours are at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)