

# U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE

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**CONTRACT NO.:** AG-024B-C-13-9010

**PROJECT:** LONG-TERM FIRE RETARDANT F.O.B. ORIGIN

**CONTRACTOR:** ICL PERFORMANCE PRODUCTS LP  
10667 JERSEY BLVD  
RANCHO CUCAMONGA, CA 91730

Phone: 909-983-0772  
Fax: 909-984-4770

**AWARDING OFFICE:** U.S. FOREST SERVICE - CONTRACTING  
NATIONAL INTERAGENCY FIRE CENTER  
OWYHEE BUILDING - MS 1100  
3833 S DEVELOPMENT AVE  
BOISE, ID 83705-5384



**MICHAEL MCFARLANE**  
**CONTRACTING OFFICER**  
Telephone: 208/387-5695  
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**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**

1 REQUISITION NUMBER

PAGE 1 OF 55

**OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30**

2 CONTRACT NO

AG-024B-C-13-9010

3 AWARD EFFECTIVE DATE

09/26/2013

4 ORDER NUMBER

5 SOLICITATION NUMBER

AG-024B-S-13-9010

6 SOLICITATION ISSUE DATE

April 19, 2013

7 FOR SOLICITATION INFORMATION CALL

a. NAME

Michael McFarlane

b. TELEPHONE NUMBER (No collect calls)

208-387-5695

8 OFFER DUE DATE LOCAL TIME

May 6, 2013  
1:00 PM MST

9 ISSUED BY

CODE

U.S. FOREST SERVICE, CONTRACTING  
NATIONAL INTERAGENCY FIRE CENTER  
OWYHEE BUILDING - MS 1100  
3833 S DEVELOPMENT AVE  
BOISE, ID 83705-5354

10 THIS ACQUISITION IS  UNRESTRICTED OR  SET ASIDE 100% FOR

- SMALL BUSINESS
- WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM
- HUBZONE SMALL BUSINESS
- ECONOMICALLY DISADVANTAGED NAICS 325314 WOMEN-OWNED SMALL BUSINESS (FDWOSB)
- SERVICE-DISAB ED
- VETERAN-OWNED SMALL BUSINESS
- 8 (A)

SIZE STANDARD  
500 Employees

11 DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED

SEE SCHEDULE

12 DISCOUNT TERMS

13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14 METHOD OF SOLICITATION  
 RFQ  FB  RFP

15 DELIVER TO

CODE

16 ADMINISTERED BY

CODE

See Block 9

17a. CONTRACTOR/ OFFEROR

CODE

FACILITY CODE

ICL PERFORMANCE PRODUCTS LP  
10667 JERSEY BLVD  
RANCHO CUCAMONGA, CA 91730

18a. PAYMENT WILL BE MADE BY

CODE

ALBUQUERQUE SERVICE CENTER  
INCIDENT BUSINESS - CONTRACTS  
101B SUN AVENUE, NE  
ALBUQUERQUE, NM 87109

TELEPHONE NO. (909) 983-0772 NINE-DIGIT DUNS NO. 085271638

17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED

SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	SEE SECTION B (ATTACHED) LONG TERM RETARDANT (FOB ORIGIN) REQUIREMENTS CONTRACT				

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT (For Govt. Use Only)

27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED

27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHABLE

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN \_\_\_\_\_ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

29. AWARD OF CONTRACT REF \_\_\_\_\_ OFFER DATED \_\_\_\_\_ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS

30a. SIGNATURE OF OFFEROR/CONTRACTOR

*[Signature]*

31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)

*[Signature]*

30b. NAME AND TITLE OF SIGNED (Type or print)

Edward Goldberg, Business Director

30c. DATE SIGNED

9/12/13

31b. NAME OF CONTRACTING OFFICER (Type or print)

MICHAEL MCFARLANE

31c. DATE SIGNED

9/26/2013

LEGAL REVIEW  
2/16

*[Handwritten signature]*

## **SECTION B SCHEDULE OF ITEMS**

### **B.1 SCOPE OF WORK**

The purpose of this solicitation and any resultant Requirements Contract is to obtain Long Term Fire Retardant to various locations throughout the US on an F.O.B. Origin basis. Only products identified on the US Forest Service Qualified Products List, Long Term Fire Retardant for Wildland Fire Management, (at [www.fs.fed.us/rm/fire/wfcs/](http://www.fs.fed.us/rm/fire/wfcs/)) are acceptable products under this requirement. Retardant supplied under this contract will be F.O.B. Origin and shall be delivered to locations directed by the Government. The Government will be responsible for payment for the cost of delivery of the retardant by the Contractor on behalf of the Government.

### **B.2 EXTENT OF OBLIGATION**

The contract period is for five years from the date of award, a base year plus 4 option years. An annual review will be conducted and at that time it will be determined if the Government will exercise the option year. Additionally, the Government is obligated only to the extent of authorized purchases actually made under the contract.

### **B.3 SCHEDULE OF ITEMS**

The following Schedule of items identifies the specific item numbers of Long Term Fire Retardant products based on the year (X.XX) and the type of product (X.XX). All products shall be ordered by the specific item numbers as identified in the schedule of items. Invoicing shall be accomplished by invoicing the price per ton of product ordered and delivered. Additional information such as price per mixed gallons, yield of mixed retardant are for informational purposes only. Lot numbers delivered shall be consistent with the lot numbers identified for each CLIN below. Should product be delivered that does not have the appropriate lot number below, Government representatives may elect to confirm the lot is acceptable by contacting the Contracting Officer's Representative or the Contracting Officer, or the Government reserves the right to reject the lot delivered by the Contractor.

### **B.4 PRODUCT SPECIFICATIONS**

Products provided under this contract shall meet the specifications identified in US Forest Service Specification 5100-304c, Amendment 3 located at: [http://www.fs.fed.us/rm/fire/wfcs/documents/304c\\_a3.pdf](http://www.fs.fed.us/rm/fire/wfcs/documents/304c_a3.pdf). Products must currently be listed on the US Forest Services Qualified Products List (QPL) in Section D.

**SECTION B  
 SCHEDULE OF ITEMS**

**Contract Line Item Number 1: Base Year - 4/28/13 – 4/27/14**

<b>ITEM No.</b>	<b>PRODUCT</b>	<b>LOT NO.</b>	<b>Price/Ton</b>	<b>Estimated Quantity</b>	<b>Extended Amount</b>	<b>Mixed Gallon</b>	<b>Yield Mixed Retardant (Gal/T)</b>
1.01	LC-95A Bulk FOB Moreland	1051695-C	\$1,936.85	450	\$871,582.50	\$1.84	1054
1.02	LC-95A Bulk FOB Buckeye, AZ	1051695-C	\$2,154.27	450	\$969,421.50	\$2.04	1054
1.03	LC-95A Bulk FOB Pasco	1051695-C	\$2,053.71	450	\$924,169.50	\$1.95	1054
1.04	LC95-W Bulk FOB Moreland	0381090-B	\$1,936.85	450	\$871,582.50	\$1.84	1054
1.05	LC95-W Totes FOB Moreland	0381090-B	\$2,049.23	450	\$922,153.50	\$1.94	1054
1.16	259-F BIN	0124025-A	\$4,068.57	100	\$406,857.00	\$2.18	1869
1.07	259-F PAIL	0124025-A	\$4,318.68	20	\$86,373.60	\$2.31	1869
1.08	LC95-W PAIL	0381090-B	\$3,653.95	20	\$73,079.00	\$3.47	1054
1.09	P100-F BULK	0363094-B	\$4,399.47	100	\$439,947.00	\$2.05	2150
1.10	P100-F BIN	0363094-B	\$4,518.57	100	\$451,857.00	\$2.10	2150
1.11	P100-F BULK BAG	0363094-B	\$4,459.02	20	\$89,180.40	\$2.07	2150
1.12	P100-F-PAISLS	0363094-B	\$4,935.43	20	\$98,708.60	\$2.30	2150
1.13	LC-95A-F Bulk FOB Moreland	0381045-C	\$2,090.81	100	\$209,081.00	\$1.98	1054
1.14	MVP-F BULK	0403014-A	\$4,399.47	100	\$439,947.00	\$1.98	2225
1.15	MVP-F BIN	0403014-A	\$4,518.57	100	\$451,857.00	\$2.03	2225
1.16	MVP-F BULK BAG	0403014-A	\$4,459.02	100	\$445,902.00	\$2.00	2225
1.17	MVP-F-PAISLS	0403014-A	\$4,935.43	100	\$495,543.00	\$2.22	2225
<b>Estimated total Price Year 1</b>					<b>\$8,247,242.10</b>		

**SECTION B  
 SCHEDULE OF ITEMS**

**Contract Line Item Number 2: Option year 1 - 4/28/14 – 4/27/15**

<b>ITEM No.</b>	<b>PRODUCT</b>	<b>LOT NO.</b>	<b>Price/Ton</b>	<b>Estimated Quantity</b>	<b>Extended Amount</b>	<b>Mixed Gallon</b>	<b>Yield Mixed Retardant</b>
2.01	LC-95A Bulk FOB Moreland	1051695-C	\$2,024.01	450	\$910,803.71	\$1.92	1054
2.02	LC-95A Bulk FOB Buckeye, AZ	1051695-C	\$2,251.21	450	\$1,013,045.47	\$2.14	1054
2.03	LC-95A Bulk FOB Pasco	1051695-C	\$2,146.13	450	\$965,757.13	\$2.04	1054
2.04	LC95-W Bulk FOB Moreland	0381090-B	\$2,024.01	450	\$910,803.71	\$1.92	1054
2.05	LC95-W Totes FOB Moreland	0381090-B	\$2,141.45	450	\$963,650.41	\$2.03	1054
2.06	259-F BIN	0124025-A	\$4,251.66	100	\$425,165.57	\$2.27	1869
2.07	259-F PAIL	0124025-A	\$4,513.02	20	\$90,260.41	\$2.41	1869
2.08	LC95-W PAIL	0381090-B	\$3,818.38	20	\$76,367.56	\$3.62	1054
2.09	P100-F BULK	0363094-B	\$4,597.45	100	\$459,744.62	\$2.14	2150
2.10	P100-F BIN	0363094-B	\$4,721.91	100	\$472,190.57	\$2.20	2150
2.11	P100-F BULK BAG	0363094-B	\$4,659.68	20	\$93,193.52	\$2.17	2150
2.12	P100-F-PAILS	0363094-B	\$5,157.52	20	\$103,150.49	\$2.40	2150
2.13	LC-95A-F Bulk FOB Moreland	0381045-C	\$2,184.90	100	\$218,490.00	\$2.07	1054
2.14	MVP-F BULK	0403014-A	\$4,597.45	100	\$459,745.00	\$2.07	2225
2.15	MVP-F BIN	0403014-A	\$4,721.91	100	\$472,191.00	\$2.12	2225
2.16	MVP-F BULK BAG	0403014-A	\$4,659.68	100	\$465,968.00	\$2.09	2225
2.17	MVP-F-PAILS	0403014-A	\$5,157.52	100	\$515,752.00	\$2.32	2225
<b>Estimated total Price Year 2</b>					<b>\$8,616,279.17</b>		

**SECTION B  
 SCHEDULE OF ITEMS**

**Contract Line Item Number 3: Option year 2 - 4/28/15 – 4/27/16**

ITEM No.	PRODUCT	LOT NO.	Price/Ton	Estimated Quantity	Extended Amount	Mixed Gallon	Yield Mixed Retardant
3.01	LC-95A Bulk FOB Moreland	1051695-C	\$2,115.09	450	\$951,789.88	\$2.01	1054
3.02	LC-95A Bulk FOB Buckeye, AZ	1051695-C	\$2,352.52	450	\$1,058,632.51	\$2.23	1054
3.03	LC-95A Bulk FOB Pasco	1051695-C	\$2,242.70	450	\$1,009,216.20	\$2.13	1054
3.04	LC95-W Bulk FOB Moreland	0381090-B	\$2,115.09	450	\$951,789.88	\$2.01	1054
3.05	LC95-W Totes FOB Moreland	0381090-B	\$2,237.81	450	\$1,007,014.68	\$2.12	1054
3.06	259-F BIN	0124025-A	\$4,442.98	100	\$444,298.02	\$2.38	1869
3.07	259-F PAIL	0124025-A	\$4,716.11	20	\$94,322.13	\$2.52	1869
3.08	LC95-W PAIL	0381090-B	\$3,990.20	20	\$79,804.09	\$3.79	1054
3.09	P100-F BULK	0363094-B	\$4,804.33	100	\$480,433.12	\$2.23	2150
3.10	P100-F BIN	0363094-B	\$4,934.39	100	\$493,439.14	\$2.30	2150
3.11	P100-F BULK BAG	0363094-B	\$4,869.36	20	\$97,387.23	\$2.26	2150
3.12	P100-F-PAIS	0363094-B	\$5,389.61	20	\$107,792.26	\$2.51	2150
3.13	LC-95A-F Bulk FOB Moreland	0381045-C	\$2,283.22	100	\$228,322.00	\$2.17	1054
3.14	MVP-F BULK	0403014-A	\$4,804.33	100	\$480,433.00	\$2.16	2225
3.15	MVP-F BIN	0403014-A	\$4,934.39	100	\$493,439.00	\$2.22	2225
3.16	MVP-F BULK BAG	0403014-A	\$4,869.36	100	\$486,936.00	\$2.19	2225
3.17	MVP-F-PAIS	0403014-A	\$5,389.61	100	\$538,961.00	\$2.42	2225
<b>Estimated total Price Year 3</b>					<b>\$9,004,010.14</b>		

**SECTION B  
 SCHEDULE OF ITEMS**

**Contract Line Item Number 4: Option year 3 - 4/28/16 – 4/27/17**

ITEM No.	PRODUCT	LOT NO.	Price/Ton	Estimated Quantity	Extended Amount	Mixed Gallon	Yield Mixed Retardant
4.01	LC-95A Bulk FOB Moreland	1051695-C	\$2,210.27	450	\$994,620.42	\$2.10	1054
4.02	LC-95A Bulk FOB Buckeye, AZ	1051695-C	\$2,458.38	450	\$1,106,270.98	\$2.33	1054
4.03	LC-95A Bulk FOB Pasco	1051695-C	\$2,343.62	450	\$1,054,630.93	\$2.22	1054
4.04	LC95-W Bulk FOB Moreland	0381090-B	\$2,210.27	450	\$994,620.42	\$2.10	1054
4.05	LC95-W Totes FOB Moreland	0381090-B	\$2,338.51	450	\$1,052,330.34	\$2.22	1054
4.06	259-F BIN	0124025-A	\$4,642.91	100	\$464,291.43	\$2.48	1869
4.07	259-F PAIL	0124025-A	\$4,928.33	20	\$98,566.63	\$2.64	1869
4.08	LC95-W PAIL	0381090-B	\$4,169.76	20	\$83,395.28	\$3.96	1054
4.09	P100-F BULK	0363094-B	\$5,020.53	100	\$502,052.61	\$2.34	2150
4.10	P100-F BIN	0363094-B	\$5,156.44	100	\$515,643.90	\$2.40	2150
4.11	P100-F BULK BAG	0363094-B	\$5,088.48	20	\$101,769.65	\$2.37	2150
4.12	P100-F-PAIS	0363094-B	\$5,632.15	20	\$112,642.91	\$2.62	2150
4.13	LC-95A-F Bulk FOB Moreland	0381045-C	\$2,385.96	100	\$238,596.00	\$2.26	1054
4.14	MVP-F BULK	0403014-A	\$5,020.53	100	\$502,053.00	\$2.26	2225
4.15	MVP-F BIN	0403014-A	\$5,156.44	100	\$515,644.00	\$2.32	2225
4.16	MVP-F BULK BAG	0403014-A	\$5,088.48	100	\$508,848.00	\$2.29	2225
4.17	MVP-F-PAIS	0403014-A	\$5,632.15	100	\$563,215.00	\$2.53	2225
<b>Estimated total Price Year 4</b>					<b>\$9,409,191.50</b>		



**SECTION B  
 SCHEDULE OF ITEMS**

**Contract Line Item Number 5: Option year 5 - 4/28/17 – 4/27/18**

ITEM No.	PRODUCT	LOT NO.	Price/Ton	Estimated Quantity	Extended Amount	Mixed Gallon	Yield Mixed Retardant
5.01	LC-95A Bulk FOB Moreland	1051695-C	\$2,309.73	450	\$1,039,378.34	\$2.19	1054
5.02	LC-95A Bulk FOB Buckeye, AZ	1051695-C	\$2,569.01	450	\$1,156,053.17	\$2.44	1054
5.03	LC-95A Bulk FOB Pasco	1051695-C	\$2,449.09	450	\$1,102,089.32	\$2.32	1054
5.04	LC95-W Bulk FOB Moreland	0381090-B	\$2,309.73	450	\$1,039,378.34	\$2.19	1054
5.05	LC95-W Totes FOB Moreland	0381090-B	\$2,443.74	450	\$1,099,685.20	\$2.32	1054
5.06	259-F BIN	0124025-A	\$4,851.85	100	\$485,184.54	\$2.60	1869
5.07	259-F PAIL	0124025-A	\$5,150.11	20	\$103,002.12	\$2.76	1869
5.08	LC95-W PAIL	0381090-B	\$4,357.40	20	\$87,148.07	\$4.13	1054
5.09	P100-F BULK	0363094-B	\$5,246.45	100	\$524,644.98	\$2.44	2150
5.10	P100-F BIN	0363094-B	\$5,388.48	100	\$538,847.88	\$2.51	2150
5.11	P100-F BULK BAG	0363094-B	\$5,317.46	20	\$106,349.29	\$2.47	2150
5.12	P100-F-PAILS	0363094-B	\$5,885.59	20	\$117,711.84	\$2.74	2150
5.13	LC-95A-F Bulk FOB Moreland	0381045-C	\$2,493.33	100	\$129,333.00	\$2.37	1054
5.14	MVP-F BULK	0403014-A	\$5,246.45	100	\$524,645.00	\$2.36	2225
5.15	MVP-F BIN	0403014-A	\$5,388.48	100	\$538,848.00	\$2.42	2225
5.16	MVP-F BULK BAG	0403014-A	\$5,317.46	100	\$531,746.00	\$2.39	2225
5.17	MVP-F-PAILS	0403014-A	\$5,885.59	100	\$588,559.00	\$2.65	2225
<b>Estimated total Price Year 5</b>					<b>\$9,712,604.09</b>		
<b>Total Estimated Price 5 Years</b>					<b>\$44,989,327</b>		

**SECTION C  
CONTRACT CLAUSES**

**C.1 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (FAR 52.212-4) (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 Government wide 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.

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(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.

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(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.

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(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

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(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.

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(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.

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- (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 or by calling 1-888-227-2423, or 269-961-5757.

**C.2 CONTRACT CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2) (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make the full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): [www.arnet.gov/far](http://www.arnet.gov/far) [www.usda.gov/procurement/policy/agar.html](http://www.usda.gov/procurement/policy/agar.html)

**FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES**

52.204-4 Printed or Copied Double-Sided on Recycled Paper (MAY 2011)  
52.232-37 Multiple Payment Arrangements (MAY 1999)



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**C.3 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (FAR 52.212-5) (JAN 2013)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

Alternate I (Aug 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (Aug 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (Aug 2012) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (Jul 2010) (Pub. L. 111-5).

(6) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Dec 2010) (31 U.S.C. 6101 note).

(7) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (Feb 2012) (41 U.S.C. 2313).

(8) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (May 2012) (section 738 of Division C of Pub. L. 112-74, section 740 of Division C of Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

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- (9) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) ([15 U.S.C. 657a](#)).
- (10) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).
- (11) [Reserved]
- (12) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (Nov 2011) ([15 U.S.C. 644](#)).
- (ii) Alternate I (Nov 2011).
- (iii) Alternate II (Nov 2011).
- (13) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (Jun 2003) ([15 U.S.C. 644](#)).
- (ii) Alternate I (Oct 1995) of [52.219-7](#).
- (iii) Alternate II (Mar 2004) of [52.219-7](#).
- (14) [52.219-8](#), Utilization of Small Business Concerns (Jan 2011) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- (15) (i) [52.219-9](#), Small Business Subcontracting Plan (Jan 2011) ([15 U.S.C. 637\(d\)\(4\)](#)).
- (ii) Alternate I (Oct 2001) of [52.219-9](#).
- (iii) Alternate II (Oct 2001) of [52.219-9](#).
- (iv) Alternate III (Jul 2010) of [52.219-9](#).
- (16) [52.219-13](#), Notice of Set-Aside of Orders (Nov 2011) ([15 U.S.C. 644\(r\)](#)).
- (17) [52.219-14](#), Limitations on Subcontracting (Nov 2011) ([15 U.S.C. 637\(a\)\(14\)](#)).
- (18) [52.219-16](#), Liquidated Damages—Subcontracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- (19) (i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (ii) Alternate I (Jun 2003) of [52.219-23](#).

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- (20) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Dec 2010) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (21) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (22) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) ([15 U.S.C. 657 f](#)).
- (23) [52.219-28](#), Post Award Small Business Program Representation (Apr 2012) ([15 U.S.C. 632\(a\)\(2\)](#)).
- (24) [52.219-29](#), Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (Apr 2012) ([15 U.S.C. 637\(m\)](#)).
- (25) [52.219-30](#), Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (Apr 2012) ([15 U.S.C. 637\(m\)](#)).
- (26) [52.222-3](#), Convict Labor (Jun 2003) (E.O. 11755).
- (27) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (Mar 2012) (E.O. 13126).
- (28) [52.222-21](#), Prohibition of Segregated Facilities (Feb 1999).
- (29) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).
- (30) [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212](#)).
- (31) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).
- (32) [52.222-37](#), Employment Reports on Veterans (Sept 2010) ([38 U.S.C. 4212](#)).
- (33) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- (34) [52.222-54](#), Employment Eligibility Verification (Jul 2012). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)
- (35) (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

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- (ii) Alternate I (May 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (36) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (Dec 2007) ([42 U.S.C. 8259b](#)).
- (37) (i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).
- (ii) Alternate I (Dec 2007) of [52.223-16](#).
- (38) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).
- (39) [52.225-1](#), Buy American Act—Supplies (Feb 2009) ([41 U.S.C. 10a-10d](#)).
- (40) (i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (Nov 2012) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, and 112-43).
- (ii) Alternate I (Mar 2012) of [52.225-3](#).
- (iii) Alternate II (Mar 2012) of [52.225-3](#).
- (iv) Alternate III (Nov 2012) of [52.225-3](#).
- (41) [52.225-5](#), Trade Agreements (Nov 2012) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).
- (42) [52.225-13](#), Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- (43) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).
- (44) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](#)).
- (45) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).
- (46) [52.232-30](#), Installment Payments for Commercial Items (Oct 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).
- (47) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) ([31 U.S.C. 3332](#)).

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- (48) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) ([31 U.S.C. 3332](#)).
- (49) [52.232-36](#), Payment by Third Party (Feb 2010) ([31 U.S.C. 3332](#)).
- (50) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).
- (51) (i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).
- (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).
- (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (May 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).
- (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Sep 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).
- (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Sep 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).
- (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 351](#), *et seq.*).
- (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).
- (7) [52.222-17](#), Nondisplacement of Qualified Workers (Jan 2013) (E.O. 13495).
- (8) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247).
- (9) [52.237-11](#), Accepting and Dispensing of \$1 Coin (Sept 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records -- Negotiation.

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- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
- (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—
- (i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).
  - (ii) [52.219-8](#), Utilization of Small Business Concerns (Dec 2010) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.
  - (iii) [52.222-17](#), Nondisplacement of Qualified Workers (Jan 2013) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause [52.222-17](#).
  - (iv) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).
  - (v) [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212](#)).
  - (vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).
  - (vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

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(viii) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(q\)](#)).

Alternate I (Aug 2007) of [52.222-50](#) ([22 U.S.C. 7104\(q\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).

(xii) [52.222-54](#), Employment Eligibility Verification (Jul 2012).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

**C.4 52.216-18 ORDERING (OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from:

Date of award through April 27, 2014

April 28, 2014 through April 27, 2015 if Option Year 1 is exercised;

April 28, 2015 through April 27, 2016 if Option Year 2 is exercised;

April 28, 2016 through April 27, 2017 if Option Year 3 is exercised; and

April 28, 2017 through April 27, 2018 if all Option Years are exercised.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods.

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**C.5 452.216-73 MINIMUM AND MAXIMUM CONTRACT AMOUNTS (FEB 1988)**

During the period specified in FAR clause 52.216-18, ORDERING, the Government shall place orders totaling a minimum of \$0, but not in excess of \$50,000,000.

**C.6 52.216-19 ORDER LIMITATIONS (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$500.00, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor --

(1) Any order for a single item in excess of \$500,000.00;

(2) Any order for a combination of items in excess of \$1,000,000.00 in any seven day period.

(c) The Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office and the Contracting Office identified on Block 9 of the SF 1449 within 3 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

**C.7 52.216-21 REQUIREMENTS (OCT 1995)**

(a) This is a requirements contract for the supplies specified and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule except as provide in paragraph C.6 (g) below.



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(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after three months after expiration of this contract.

(g) The Government also reserves the right to order product in the not to exceed amount of 200,000 gallons/retardant type/year from other sources for field testing purposes.

#### **C.8 EFFECTIVE PERIOD OF THE CONTRACT (AGAR 452.211-75) (FEB 1988)**

The effective period of this contract is from date of award through April 27, 2014.

The effective period of this contract should the options be exercised is as follows:

Option Year 1 – April 28, 2014 through April 27, 2015

Option Year 2 – April 28, 2015 through April 27, 2016

Option Year 3 – April 28, 2016 through April 27, 2017, and

Option Year 4 – April 28, 2017 through April 27, 2018

#### **C.9 OPTION TO EXTEND SERVICES (FAR 52.217-8) (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days.

#### **C.10 OPTION TO EXTEND THE TERM OF THE CONTRACT (FAR 52.217-9) (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor at least 30 days prior to expiration of the contract.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years and 6 months.

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### **C.11 INDIVIDUALS AUTHORIZED TO PURCHASE UNDER THE CONTRACT**

This contract provides for the normal supply requirement of long-term retardant by the Department of Agriculture and the Department of the Interior, and may be used by other agencies with interagency agreements such as Department of Defense. Positions authorized to approve purchases under this contract are as follows:

Dispatchers -National Interagency Coordination Center or Geographical Coordination Centers via Resources Orders.

Contracting Officers from the US Forest Service and Department of the Interior with adequate Certificate of Appointment to cover the value of the order via delivery orders.

Contracting Officers from other Federal Agencies with adequate Certificate of Appointments or warrants to cover the value of the order via the issuance of delivery orders. Orders received by the Contractor from agencies other than the US Forest Service and the Department of the Interior, must be submitted to, and approved by, the US Forest Service Contracting Officer prior to the Contractor's acceptance of the order.

### **C.12 DELIVERY TICKETS / PACKING LIST**

A delivery ticket/packing list or other suitable shipping document shall accompany each shipment and shall show:

- (a) Name and address of consignor
- (b) The name and address of consignee
- (c) Government Contract Call number
- (d) Government bill of lading number covering the shipment, if any, and
- (e) Description of the material shipped (materials shipping data sheet), including shipping lot number and qualification lot number, item number, quantity, number of containers, and package number, if any.

### **C.13 ADDENDUM TO FAR 52.212-4 (G) INVOICES**

#### **(a) Invoice content**

Invoices shall be supported by the following information to be considered a proper invoice:

- (1) Copy of the Order for Service (and/or Resource Order)
- (2) Portable Mixing System Daily Operations Report – Signed by a Government Representative
- (3) Contract/BPA number of the Mobile Retardant Base or description of retardant usage.
- (4) Copies of all invoices for delivery of product per C.11 above.
- (5) Lot number of retardant shipped.
- (6) Period of delivery or shipment dates

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(b) Submittal of Invoices

(1) US Forest Service Invoices

Invoices in support of the US Forest Service shall be submitted to the following:

USDA Forest Service, Incident Support Branch  
Attn: Michael McFarlane  
Owyhee Building – MS 1100  
3833 S. Development Avenue  
Boise, ID 83705

(2) Department of the Interior Invoices

Invoices submitted to Orders Placed by the Department of the Interior bureaus shall be submitted as follows:

DOI: This contract is considered an established source for DOI purposes.

ICL shall submit draft invoices to the DOI ordering unit (e.g. Attention: Airtanker Base Manager). The DOI ordering unit shall create an order/payment document in DOI's electronic procurement system, Federal Business Management System (FBMS). Once the document is created, the order number must be provided to ICL for them to invoice DOI via IPP (see below).

**Electronic Invoicing and Payment Requirements - Internet Payment Platform (IPP) (September 2011)**

Payment requests must be submitted electronically through the U. S. Department of the Treasury's Internet Payment Platform System (IPP).

"Payment request" means any request for contract financing payment or invoice payment by the Contractor. To constitute a proper invoice, the payment request must comply with the requirements identified in the applicable Prompt Payment clause included in the contract, or the clause 52.212-4 Contract Terms and Conditions – Commercial Items included in commercial item contracts. The IPP website address is: <https://www.ipp.gov>.

Under this contract, the following documents are required to be submitted as an attachment to the IPP invoice:

Vendor's Itemized Invoice

The Contractor must use the IPP website to register access and use IPP for submitting requests for payment. The Contractor Government Business Point of Contact (as listed in CCR) will receive enrollment instructions via email from the Federal Reserve Bank of Boston (FRBB) within 3 – 5 business days of the contract award date. Contractor assistance with enrollment can be obtained by contacting the IPP Production Helpdesk via email [ippgroup@bos.frb.org](mailto:ippgroup@bos.frb.org) or phone (866) 973-3131.

If the Contractor is unable to comply with the requirement to use IPP for submitting invoices for payment, the Contractor must submit a waiver request in writing to the [BLM Ordering] Officer with its proposal or quotation.

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**NOTE: If an administrative unit is doing a direct order and the vendor provides the contract price, the payment may be made by the Administrative Unit purchasing the product with a Government Credit Card.**

(3) Other Agencies Invoices

ORDERS PLACED BY AGENCIES Other than the US Forest Service and the Department of the Interior shall include agency specific invoicing procedures in the order for supplies placed by that agency.

### **C.14 NOTICE OF CONTRACTOR PERFORMANCE ASSESSMENT REPORTING SYSTEM (JULY 2010)**

(a) The US Forest Service has implemented the Contractor Performance Assessment Reporting System (CPARS) for reporting all past performance information. One or more past performance evaluations will be conducted in order to record your contract performance as required by FAR 42.15.

(b) The past performance evaluation process is a totally paperless process using CPARS. CPARS is a web-based system that allows for electronic processing of the performance evaluation report. Once the report is processed, it is available in the Past Performance Information Retrieval System (PPIRS) for Government use in evaluating past performance as part of a source selection action.

(c) We request that you furnish the Contracting Officer with the name, position title, phone number, and email address for each person designated to have access to your firm's past performance evaluation(s) for the contract no later than 30 days after award. Each person granted access will have the ability to provide comments in the Contractor portion of the report and state whether or not the Contractor agrees with the evaluation, before returning the report to the Assessing Official. The report information must be protected as source selection sensitive information not releasable to the public.

(d) When your Contractor Representative(s) (Past Performance Points of Contact) are registered in CPARS, they will receive an automatically-generated email with detailed login instructions. Further details, systems requirements, and training information for CPARS are available at <http://www.cpars.csd.disa.mil/>. The CPARS User Manual, registration for On Line Training for Contractor Representatives, and a practice application may be found at this site.

(e) Within 60 days after the end of a performance period, the Contracting Officer will complete an interim or final past performance evaluation and the report will be accessible at <http://www.cpars.csd.disa.mil/>. Contractor Representatives may then provide comments in response to the evaluation, or return the evaluation without comment. Comments are limited to the space provided in Block 22. Your comments should focus on objective facts in the Assessing Official's narrative and should provide your views on the causes and ramifications of the assessed performance. In addition to the ratings and supporting narratives, blocks 1 – 17 should be reviewed for accuracy, as these include key fields that will be used by the Government to identify your firm in future source selection actions. If you elect not to provide comments, please acknowledge receipt of the evaluation by indicating "No comment" in Block 22, and then signing and dating Block 23 of the form. Without a statement in Block 22, you will be unable to sign and submit the evaluation back to the Government. If you do not sign and

### SECTION C CONTRACT CLAUSES

submit the CPAR within 30 days, it will automatically be returned to the Government and will be annotated: "The report was delivered/received by the contractor on (date). The contractor neither signed nor offered comment in response to this assessment." Your response is due within 30 calendar days after receipt of the CPAR.

(f) The following guidelines apply concerning your use of the past performance evaluation:

(1) Protect the evaluation as "source selection information." After review, transmit the evaluation by completing and submitting the form through CPARS. If for some reason you are unable to view and/or submit the form through CPARS, contact the Contracting Officer for instructions.

(2) Strictly control access to the evaluation within your organization. Ensure the evaluation is never released to persons or entities outside of your control.

(3) Prohibit the use of or reference to evaluation data for advertising, promotional material, preaward surveys, responsibility determinations, production readiness reviews, or other similar purposes.

(g) If you wish to discuss a past performance evaluation, you should request a meeting in writing to the Contracting Officer no later than seven days following your receipt of the evaluation. The meeting will be held in person or via telephone or other means during your 30-day review period.

(h) A copy of the completed past performance evaluation will be available in CPARS for your viewing and for Government use supporting source selection actions after it has been finalized.

#### **C.15 F.O.B. ORIGIN (FAR 52.247-29) (FEB 2006)**

(a) The term "f.o.b. origin," as used in this clause, means free of expense to the Government delivered—

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

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(b) The Contractor shall—

- (1)
  - (i) Pack and mark the shipment to comply with contract specifications; or
  - (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
- (2)
  - (i) Order specified carrier equipment when requested by the Government; or
  - (ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;
- (3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;
- (4) Be responsible for any loss of and/or damage to the goods—
  - (i) Occurring before delivery to the carrier;
  - (ii) Resulting from improper packing and marking; or
  - (iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;
- (5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—
  - (i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;
  - (ii) The seals affixed to the conveyance with their serial numbers or other identification;
  - (iii) Lengths and capacities of cars or trucks ordered and furnished;
  - (iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

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(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., *“This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”*; and

(vi) The signature of the carrier’s agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier’s equipment are not available at the Contractor’s plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier’s facilities are available; subject, however, to the following qualifications:

(1) If the Contractor’s shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor’s expense, and to that extent the contract shall be “f.o.b. destination.”

(2) Notwithstanding paragraph (c)(1) of this clause, if the Contractor’s shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor’s expense, to the container yard in the same or nearest city where seavan container service is available.

**C.16 ECONOMIC ADJUSTMENT – LABOR AND MATERIAL (FAR 52.216-4) (JAN 1997)**

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor’s proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor’s adjustment proposal.

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(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for—

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.



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(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in [Subpart 4.7](#) of the Federal Acquisition Regulation (FAR), whichever is earlier.

**C.17 INSPECTION AND ACCEPTANCE (AGAR 452.246-70) (FEB 1988)**

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at the point of final destination as specified in each order.

**SECTION D  
 CONTRACT EXHIBITS**

**EXHIBIT 1 - LONG-TERM RETARDANT FOR WILDLAND FIRE MANAGEMENT**



US Forest Service

Washington Office

Fire & Aviation Management

8/5/12

**Long-Term Retardant for Wildland Fire Management**

Qualified by US Forest Service in Accordance with Forest Service Specification 5100-304c as Amended

These products are evaluated and qualified only at the specified mix ratio and only for use with the indicated application.  
 Consult individual agencies for specific policies relating to long-term retardant use.

<u>Chemical</u>	<u>Mix Ratio</u> <small>(Pounds concentrate per gallon water)</small>	<u>Qualified Applications<sup>1</sup></u>				
		<u>Fixed-Wing</u>		<u>Helicopter</u>		<u>Ground Engine</u>
		<u>Multi Engine</u>	<u>SEATS</u>	<u>Fixed-Tank</u>	<u>Bucket</u>	
<b>Dry Concentrate - Gum-thickened; Permanent or Temporary Base</b>						
Phos-Chek D75-R	1.20 lb/gal	•	•	-	•	-
Phos-Chek D75-F	1.20 lb/gal	•	•	-	•	-
Phos-Chek P100-F	1.0 lb/gal	•	•	-	•	•
Phos-Chek MVP-F <sup>2</sup>	0.95 lb/gal	•	•	-	•	•
<b>Dry Concentrate - Gum-thickened; Temporary Base</b>						
Phos-Chek 259-F	1.14–1.60 lb/gal	•	•	•	•	•
<b>Wet Concentrate - Gum-thickened; Permanent or Temporary Base</b>						
Phos-Chek LC-95A-R	5.5:1	•	•	-	•	•
Phos-Chek LC-95A-F	5.5:1	•	•	-	•	•
<b>Wet Concentrate - Gum-thickened; Temporary Base</b>						
Phos-Chek LC-95-W	5.5:1	•	•	-	•	•
1 – Qualification Notes • Fully Qualified – Product complies with all requirements of a formal specification. o Conditional Approval – Product complies with all requirements in the specification for laboratory evaluation; a field evaluation is required for full qualification. - Not qualified for this application.						
2 – Phos-Chek MVP-F is currently undergoing a field evaluation at selected bases.						