

N00039-20-D-0057 MOD#P000 08 MIDS\_JTRS\_05-09-2023

## U.S. Government Clauses

**Prime Contract Number: N00039-20-D-0057**

**Modification Number: P00008**

**DPAS Rating: DPAS DO-A7**

**Date of Creation: 05-09-2023**

***The following customer contract requirements apply to any Purchase Order referencing the above U.S. Government prime contract number and are hereby incorporated into the Purchase Order by full text or by reference with the same force and effect as if they were given in full text. The terms and conditions of the versions of the “Flowdown of U.S. Government Contract Clauses Under U.S. Government Contracts” and “Flowdown Updates” documents in effect on the date of the particular Order shall also apply. These documents are made available at the RTX Supplier Site. The full text of FAR/DFARS clauses may be accessed at <https://www.acquisition.gov/>.***

In all provisions and clauses listed herein, terms shall be revised to suitably identify the party to establish Supplier’s obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term “Government” and equivalent phrases shall mean “Buyer”, the term “Contracting Officer” shall mean “Buyer’s Purchasing Representative”, the term “Contractor” or “Offeror” shall mean “Supplier”, “Subcontractor” shall mean “Supplier’s Subcontractor” under this Purchase Order, and the term “Contract” shall mean this “Purchase Order”. For the avoidance of doubt, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227- 2 or (2) when title to property is to be transferred directly to the Government. Supplier shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS provisions and clauses in accordance with the flow down requirements specified in such clauses. Nothing in this Purchase Order grants Supplier a direct right of action against the Government. If any of the following FAR or DFARS clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

Buyer or Buyer Affiliates reserve the right to add or update any FAR or DFAR clause or special contract provision based on customer contract directives

Capitalized words used herein and not otherwise defined shall have the meanings ascribed to them in the Terms and Conditions.

The requirements below are in accordance with the U.S. Government prime contract and are not modified by Buyer for each individual Supplier. Supplier will remain at all times responsible for providing to any government agency, Buyer, or Buyer’s customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

**FAR CLAUSES INCORPORATED BY REFERENCE**

<b>Reference</b>	<b>Date</b>	<b>Clause</b>
52.202-1	Nov-13	Definitions
52.203-3	Apr-84	Gratuities
52.203-5	May-14	Covenant Against Contingent Fees
52.203-6	Sep-06	Restrictions On Subcontractor Sales To The Government
52.203-7	May-14	Anti-Kickback Procedures
52.203-8	May-14	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
52.203-10	May-14	Price Or Fee Adjustment For Illegal Or Improper Activity
52.203-12	Oct-10	Limitation On Payments To Influence Certain Federal Transactions
52.203-13	Oct-15	Contractor Code of Business Ethics and Conduct
52.203-19	Jan-17	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-2	Aug-96	Security Requirements
52.204-4	May-11	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper
52.204-10	Oct-18	Reporting Executive Compensation and First-Tier Subcontract Awards
52.204-13	Oct-18	System for Award Management Maintenance
52.204-18	Jul-16	Commercial and Government Entity Code Maintenance
52.204-19	Dec-14	Incorporation by Reference of Representations and Certifications
52.204-23	Jul-18	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
52.204-24	Aug-20	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment
52.204-25	Aug-19	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
52.204-25	Jul-20	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
52.209-6	Oct-15	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.209-9	Oct-18	Updates of Publicly Available Information Regarding Responsibility Matters
52.209-10	Nov-15	Prohibition on Contracting With Inverted Domestic Corporations
52.210-1	Apr-11	Market Research
52.211-5	Aug-00	Material Requirements
52.211-15	Apr-08	Defense Priority And Allocation Requirements
52.215-2	Oct-10	Audit and Records--Negotiation
52.215-8	Oct-97	Order of Precedence--Uniform Contract Format
52.215-10	Aug-11	Price Reduction for Defective Certified Cost or Pricing Data
52.215-12	Jul-18	Subcontractor Certified Cost or Pricing Data (Deviation 2018-00015) (Dev)
52.215-14	Oct-10	Integrity of Unit Prices
52.215-15	Oct-10	Pension Adjustments and Asset Reversions
52.215-18	Jul-05	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions
2.215-19	Oct-97	Notification of Ownership Changes
52.215-21	Oct-10	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data -- Modifications
52.215-23	Oct-09	Limitations on Pass-Through Charges
52.216-8	Jun-11	Fixed Fee
52.216-11	Apr-84	Cost Contract--No Fee
52.217-7	Mar-89	Option For Increased Quantity--Separately Priced Line Item
52.219-4 (Dev)	Jan-19	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DEVIATION 2019-O0003).

Reference	Date	Clause
52.219-8	Oct-18	Utilization of Small Business Concerns
52.219-9 (Dev)	Aug-18	Small Business Subcontracting Plan (Deviation 2018-O0018)
52.219-9 Alt II	Nov-16	Small Business Subcontracting Plan (AUG 2018) Alternate II
52.219-16	Jan-99	Liquidated Damages-Subcontracting Plan
52.222-3	Jun-03	Convict Labor
52.222-4	May-18	Contract Work Hours and Safety Standards – Overtime Compensation
52.222-19	Jan-18	Child Labor -- Cooperation with Authorities and Remedies
52.222-20	May-14	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000
52.222-21	Apr-15	Prohibition Of Segregated Facilities
52.222-26	Sep-16	Equal Opportunity
52.222-35	Oct-15	Equal Opportunity for Veterans
52.222-36	Jul-14	Equal Opportunity for Workers with Disabilities
52.222-37	Feb-16	Employment Reports on Veterans
52.222-40	Dec-10	Notification of Employee Rights Under the National Labor Relations Act
52.222-50	Jan-19	Combating Trafficking in Persons
52.222-54	Oct-15	Employment Eligibility Verification
52.223-6	May-01	Drug-Free Workplace
52.223-18	Aug-11	Encouraging Contractor Policies To Ban Text Messaging While Driving
52.225-13	Jun-08	Restrictions on Certain Foreign Purchases
52.227-1	Dec-07	Authorization and Consent
52.227-2	Dec-07	Notice And Assistance Regarding Patent And Copyright Infringement
52.227-3	Apr-84	Patent Indemnity
52.227-10	Dec-07	Filing Of Patent Applications--Classified Subject Matter
52.228-7	Mar-96	Insurance--Liability To Third Persons
52.229-3	Feb-13	Federal, State And Local Taxes
52.230-2	Jan-12	Cost Accounting Standards (Deviation)
52.230-2 (Dev)	Jul-18	Cost Accounting Standards (DEVIATION 2018-O0015)
52.230-6	Jun-10	Administration of Cost Accounting Standards
52.232-1	Apr-84	Payments
52.232-8	Feb-02	Discounts For Prompt Payment
52.232-9	Apr-84	Limitation On Withholding Of Payments
52.232-11	Apr-84	Extras
52.232-16	Apr-12	Progress Payments
52.232-16 (Dev)	Mar-20	Progress Payments (DEVIATION 2020-O0010)
52.232-16 Alt III	Apr-03	Progress Payments (Apr 2012) - Alternate III
52.232-17	May-14	Interest
52.232-20	Apr-84	Limitation Of Cost
52.232-22	Apr-84	Limitation Of Funds
52.232-23	May-14	Assignment Of Claims
52.232-25	Jan-17	Prompt Payment
52.232-25 Alt I	Feb-02	Prompt Payment (Jan 2017) Alternate I
52.232-33	Oct-18	Payment by Electronic Funds Transfer--System for Award Management
52.232-39	Jun-13	Unenforceability of Unauthorized Obligations
52.232-40	Dec-13	Providing Accelerated Payments to Small Business Subcontractors

Reference	Date	Clause
52.233-1	May-14	Disputes
52.233-1 Alt I	Dec-91	Disputes (May 2014) - Alternate I
52.233-3	Aug-96	Protest After Award
52.233-3 Alt I	Jun-85	Protest After Award (Aug 1996) - Alternate I
52.233-4	Oct-04	Applicable Law for Breach of Contract Claim
52.242-1	Apr-84	Notice of Intent to Disallow Costs
52.242-3	May-14	Penalties for Unallowable Costs
52.242-4	Jan-97	Certification of Final Indirect Costs
52.242-5	Jan-17	Payments to Small Business Subcontractors
52.242-13	Jul-95	Bankruptcy
52.242-15	Aug-89	Stop-Work Order
52.242-15 Alt I	Apr-84	Stop-Work Order (Aug 1989) – Alternate I
52.242-17	Apr-84	Government Delay Of Work
52.243-1	Aug-87	Changes--Fixed Price
52.243-2	Aug-87	Changes--Cost-Reimbursement
52.243-2 Alt II	Apr-84	Changes--Cost Reimbursement (Aug 1987) - Alternate II
52.243-6	Apr-84	Change Order Accounting
52.244-5	Dec-96	Competition In Subcontracting
52.244-6	Aug-19	Subcontracts for Commercial Items
52.245-1	Jan-17	Government Property
52.245-9	Apr-12	Use And Charges
52.246-2	Aug-96	Inspection of Supplies-Fixed Price
52.246-3	May-01	Inspection of Supplies-Cost Reimbursement
52.246-4	Aug-96	Inspection of Services- Fixed Price
52.246-5	Apr-94	Inspection of Services-Cost Reimbursement
52.246-7	Aug-96	Inspection of Research and Development-Fixed Price
52.246-8	May-01	Inspection of Research and Development- Cost Reimbursement
52.246-15	Apr-84	Certificate of Conformance
52.246-16	Apr-84	Responsibility for Supplies
52.246-23	Feb-97	Limitation Of Liability
52.246-24 Alt I	Apr-84	Limitation Of Liability--High Value Items (Feb 1997) – Alternate I
52.246-25	Feb-97	Limitation Of Liability--Services
52.248-1	Oct-10	Value Engineering
52.249-2	Apr-12	Termination For Convenience Of The Government (Fixed-Price)
52.249-6	May-04	Termination (Cost Reimbursement)
52.249-8	Apr-84	Default (Fixed-Price Supply & Service)
52.249-14	Apr-84	Excusable Delays
52.253-1	Jan-91	Computer Generated Forms

## **DFAR CLAUSES INCORPORATED BY REFERENCE**

<b>Reference</b>	<b>Date</b>	<b>Clause</b>
252.201-7000	Dec-91	Contracting Officer's Representative
252.203-7000	Sep-11	Requirements Relating to Compensation of Former DoD Officials
252.203-7001	Dec-08	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
252.203-7002	Sep-13	Requirement to Inform Employees of Whistleblower Rights
252.203-7003	Dec-12	Agency Office of the Inspector General
252.203-7004	May-19	Display of Hotline Posters
252.204-7000	Oct-16	Disclosure Of Information
252.204-7002	Dec-91	Payment For Subline Items Not Separately Priced
252.204-7003	Apr-92	Control Of Government Personnel Work Product
252.204-7004	Feb-19	Antiterrorism Awareness Training for Contractors.
252.204-7012	Oct-16	Safeguarding Covered Defense Information and Cyber Incident Reporting
252.204-7015	May-16	Notice of Authorized Disclosure of Information for Litigation Support
252.204-7018	Dec-19	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
252.205-7000	Dec-91	Provision Of Information To Cooperative Agreement Holders
252.209-7004	Dec-06	Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country
252.211-7007	Aug-12	Reporting of Government-Furnished Property
252.211-7008	Sep-10	Use of Government-Assigned Serial Numbers
252.215-7014	Jun-18	Exception from Certified Cost or Pricing Data Requirements for Foreign Military Sales Indirect Offsets.
252.217-7028	Dec-91	Over And Above Work
252.219-7003	May-19	Small Business Subcontracting Plan (DOD Contracts)
252.222-7006	Dec-10	Restrictions on the Use of Mandatory Arbitration Agreements
252.223-7004	Sep-88	Drug Free Work Force
252.223-7006	Sep-14	Prohibition On Storage, Treatment, and Disposal of Toxic or Hazardous Materials
252.225-7001	Dec-17	Buy American And Balance Of Payments Program-- Basic
252.225-7002	Dec-17	Qualifying Country Sources As Subcontractors
252.225-7002	Dec-17	Qualifying Country Sources As Subcontractors
252.225-7004	May-19	Report of Intended Performance Outside the United States and Canada--Submission after Award
252.225-7005	Jun-05	Identification Of Expenditures In The United States
252.225-7009	Oct-14	Restriction on Acquisition of Certain Articles Containing Specialty Metals
252.225-7012	Dec-17	Preference For Certain Domestic Commodities
252.225-7013	May-16	Duty-Free Entry--Basic
252.225-7028	Apr-03	Exclusionary Policies And Practices Of Foreign Government
252.225-7033	Apr-03	Waiver of United Kingdom Levies
252.225-7041	Jun-97	Correspondence in English
252.225-7048	Jun-13	Export-Controlled Items
252.226-7001	Apr-19	Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns
252.227-7013	Feb-14	Rights in Technical Data--Noncommercial Items
252.227-7014	Feb-14	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
252.227-7015	Feb-14	Technical Data--Commercial Items
252.227-7016	Jan-11	Rights in Bid or Proposal Information
252.227-7019	Sep-16	Validation of Asserted Restrictions--Computer Software

252.227-7025	May-13	Limitations on the Use or Disclosure of Government – Furnished Information Marked with Restrictive Legends
252.227-7027	Apr-88	Deferred Ordering Of Technical Data Or Computer Software
252.227-7030	Mar-00	Technical Data--Withholding Of Payment
252.227-7037	Sep-16	Validation of Restrictive Markings on Technical Data
252.227-7038	Jun-12	Patent Rights--Ownership by the Contractor (Large Business)
252.227-7039	Apr-90	Patents--Reporting Of Subject Inventions
252.231-7000	Dec-91	Supplemental Cost Principles
252.232-7002	Dec-91	Progress Payments For Foreign Military Sales Acquisitions
252.232-7004 (Dev)	Mar-20	DoD Progress Payment Rates (DEVIATION 2020-00010)
252.232-7010	Dec-06	Levies on Contract Payments
252.234-7002 (Dev)	Sep-15	Earned Value Management System (Deviation 2015-00017)
252.239-7001	Jan-08	Information Assurance Contractor Training and Certification
252.239-7018 (Dev)	Feb-19	Supply Chain Risk (DEVIATION 2018-00020).
252.242-7004	May-11	Material Management And Accounting System
252.242-7005	Feb-12	Contractor Business Systems
252.243-7001	Dec-91	Pricing Of Contract Modifications
252.243-7002	Dec-12	Requests for Equitable Adjustment
252.244-7000	Jun-13	Subcontracts for Commercial Items
252.244-7001	May-14	Contractor Purchasing System Administration
252.245-7001	Apr-12	Tagging, Labeling, and Marking of Government-Furnished Property
252.245-7002 (Dev)	Feb-20	Reporting Loss of Government Property (DEVIATION 2020- FEB 2020 00004)
252.245-7003	Apr-12	Contractor Property Management System Administration
252.245-7004	Dec-17	Reporting, Reutilization, and Disposal
252.246-7001	Mar-14	Warranty Of Data
252.246-7003	Jun-13	Notification of Potential Safety Issues
252.246-7006	Mar-16	Warranty Tracking of Serialized Items
252.246-7007	Aug-16	Contractor Counterfeit Electronic Part Detection and Avoidance System
252.246-7008	May-18	Sources of Electronic Parts
252.247-7023	Feb-19	Transportation of Supplies by Sea
252.249-7002	May-19	Notification of Anticipated Contract Termination or Reduction

NOTE: All clauses listed are applicable to both Solicitations and Contracts/Orders unless otherwise noted.

## **FAR CLAUSES INCORPORATED BY FULL TEXT**

### **52.209-3 FIRST ARTICLE APPROVAL--CONTRACTOR TESTING (SEP 1989)**

[Contracting Officer shall insert details]

- (a) The Contractor shall test \* unit(s) of Lot/Item\* as specified in this contract. At least \* calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.
- (b) The Contractor shall submit the first article test report within\_\_ \* \_\_calendar days from the date

of this contract to \_\_\_\_\_ [insert address of the Government activity to receive the report] marked "FIRST ARTICLE TEST REPORT: Contract No. \* , Lot/Item No. \*  
" Within \* calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

- (c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.
- (d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.
- (e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.
- (f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.
- (g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.
- (h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

\*These elements will be completed in individual orders.

(End of clause)

**52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA -- MODIFICATIONS (OCT 2010)--**

**ALTERNATE III (OCT 1997)**

- (a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—
- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
  - (ii) Information on modifications of contracts or subcontracts for commercial items. (A) If--
    - (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and
    - (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.
- (B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--
- (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
  - (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
  - (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.
- (2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not



extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(c) Submit the cost portion of the proposal via the following electronic media: Word, Excel, PDF. As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of clause)

## **52.216-7 ALLOWABLE COST AND PAYMENT (AUG 2018)**

(a) Invoicing.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the 30<sup>th</sup> day after the designated billing office receives a proper payment request.

In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of the clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only--

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary

course of business, costs incurred, but not necessarily paid, for--

- (A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made--
    - (1) In accordance with the terms and conditions of a subcontract or invoice; and
    - (2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;
  - (B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;
  - (C) Direct labor;
  - (D) Direct travel;
  - (E) Other direct in-house costs; and
  - (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
- (iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.
- (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless--
    - (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
    - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).
  - (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.
  - (4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.
- (c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.
- (d) Final indirect cost rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

- (2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
- (ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
- (iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:
- (A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.
  - (B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).
  - (C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.
  - (D) Occupancy expenses (intermediate indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.
  - (E) Claimed allocation bases, by element of cost, used to distribute indirect costs.
  - (F) Facilities capital cost of money factors computation.
  - (G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.
  - (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
  - (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
  - (J) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).
  - (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

- (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
  - (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
  - (N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).
  - (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).
- (iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:
- (A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.
  - (B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.
  - (C) Identification of prime contracts under which the contractor performs as a subcontractor.
  - (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).
  - (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).
  - (F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).
  - (G) Management letter from outside CPAs concerning any internal control weaknesses.
  - (H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph G) of this section.
  - (I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.
  - (J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when

the final indirect cost rate submission is made.

- (K) Federal and State income tax returns.
  - (L) Securities and Exchange Commission 10-K annual report.
  - (M) Minutes from board of directors meetings.
  - (N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.
  - (O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.
  - (v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.
- (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
- (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.
- (6) (i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--
- (A) Determine the amounts due to the Contractor under the contract; and
  - (B) Record this determination in a unilateral modification to the contract.
- (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

- (e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates--
- (1) Shall be the anticipated final rates; and
  - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) Adjusted for prior overpayments or underpayments.
- (h) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver--
    - (i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
    - (ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except--
      - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
      - (B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

- (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

#### **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 \$1,000, 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 \$100M;
  - (2) Any order for a combination of items in excess of \$500M; or
  - (3) A series of orders from the same ordering office within 10 days that together call for quantities exceeding the limitation in paragraph (b) (1) or (2) of this section.
- (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), 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 within 5 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.

(End of clause)

#### **52.216-22 INDEFINITE QUANTITY (OCT 1995)**

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

- (d) 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 completion of the final delivery order.

(End of clause)

#### **52.217-8 OPTION TO EXTEND SERVICES (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 prior to the expiration of the contract period of performance, including any option execution.

(End of clause)

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

- (a) The Government may extend the term of this contract by written notice to the Contractor within \*\* provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 1 day before the contract expires. The preliminary notice does not commit the Government to an extension.
- (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 \*\*.

\* This clause will be included in delivery orders, as required.

\*\* This will be completed in individual Delivery Orders.

(End of clause)

#### **52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JULY 2013)**

- (a) Definitions. As used in this clause--

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in



paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

- (b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:
- (1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.
  - (2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
  - (3) For long-term contracts--
    - (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
    - (ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.
- (c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards>.
- (d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.
- (e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.
- (f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.
- (g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it ( ) is, ( X ) is not a small business concern under NAICS Code 334220- assigned to contract number N0003920D0057.

(Contractor to sign and date and insert authorized signer's name and title).

(End of clause)

#### **52.222-2 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)**

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed zero (0) or the overtime premium is paid for work --

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall--

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

\* Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

(End of clause)

#### **52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

- (a) "Hazardous material", as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material No. (If none, insert "None")	Identification
—	—
—	—
—	—

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--
    - (i) Apprise personnel of the hazards to which they may be exposed in using, handling,

packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

## **52.243-7 NOTIFICATION OF CHANGES (JAN 2017)**

(a) Definitions.

"Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically authorized representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing, within 15 calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state--

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including--

(i) What line items have been or may be affected by the alleged change;

- (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
  - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
  - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.
- (c) Continued performance. Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall countermand any action which exceeds the authority of the SAR.
- (d) Government response. The Contracting Officer shall promptly, within 15 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either--
- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;
  - (2) Countermand any communication regarded as a change;
  - (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
  - (4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.
- (e) Equitable adjustments.
- (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made--
    - (i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of clause)

#### **52.244-2 SUBCONTRACTS (OCT 2010)**

(a) Definitions. As used in this clause--

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

- (d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:
- (e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
- (i) A description of the supplies or services to be subcontracted.
  - (ii) Identification of the type of subcontract to be used.
  - (iii) Identification of the proposed subcontractor.
  - (iv) The proposed subcontract price.
  - (v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
  - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
  - (vii) A negotiation memorandum reflecting—
    - (A) The principal elements of the subcontract price negotiations;
    - (B) The most significant considerations controlling establishment of initial or revised prices;
    - (C) The reason certified cost or pricing data were or were not required;
    - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
    - (E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
    - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
    - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a

determination—

- (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the allowability of any cost under this contract; or
  - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a- percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

Frequency Electronics **L-3 Technologies** Morsch Machine Spirit Electronics  
Veterans Trading Company

(End of clause)

#### **52.246-11 HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (DEC 2014)**

(a) The Contractor shall comply with the higher-level quality standard(s) listed below. The Contractor shall comply with the higher-level quality standard selected below:

ISO 9001:2008 of November 2008  
ISO/IEC 90003:2004 of February 2004  
ISO 10012:2003 of April 2003  
AQAP 2110, Edition 3 of November 2009  
AQAP 2120, Edition 3 of November 2009  
AQAP 2130, Edition 3 of November 2009  
AQAP 2210, Edition 1 of November 2006

(b) The Contractor shall include applicable requirements of the higher-level quality standard(s) listed in paragraph (a) of this clause and the requirement to flow down such standards, as applicable, to lower-tier subcontracts, in--

- (1) Any subcontract for critical and complex items (see 46.203(b) and (c)); or
- (2) When the technical requirements of a subcontract require--

(i) Control of such things as design, work operations, in-process control, testing, and inspection; or



(ii) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(End of clause)

#### **52.252-2 CLAUSES INCORPORATED BY REFERENCE (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 their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/content/regulations>

(End of clause)

#### **52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Defense Federal Acquisition Regulation Supplement (48 CFR 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

#### **DFAR CLAUSES INCORPORATED BY FULL TEXT**

##### **252.211-7003 ITEM UNIQUE IDENTIFICATION AND VALUATION (MAR 2016)**

- (a) Definitions. As used in this clause-

Automatic identification device means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

Concatenated unique item identifier means--

- (1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or
- (2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

Data Matrix means a two-dimensional matrix symbology, which is made up of square or, in some cases, round modules arranged within a perimeter finder pattern and uses the Error

Checking and Correction 200 (ECC200) specification found within International Standards Organization (ISO)/International Electrotechnical Commission (IEC) 16022.

Data qualifier means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at [http://www.acq.osd.mil/dpap/pdi/uid/iuid\\_equivalents.html](http://www.acq.osd.mil/dpap/pdi/uid/iuid_equivalents.html).

DoD item unique identification means a system of marking items delivered to DoD with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items. For items that are serialized within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier and a unique serial number. For items that are serialized within the part, lot, or batch number within the enterprise identifier, the unique item identifier shall include the data elements of the enterprise identifier; the original part, lot, or batch number; and the serial number.

Enterprise means the entity (e.g., a manufacturer or vendor) responsible for assigning unique item identifiers to items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency. Government's unit acquisition cost means—

- (1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;
- (2) For cost-type or undefinitized line, subline, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery; and
- (3) For items produced under a time-and-materials contract, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery.

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at [http://www.aimglobal.org/?Reg\\_Authority15459](http://www.aimglobal.org/?Reg_Authority15459).

Issuing agency code means a code that designates the registration (or controlling) authority for the enterprise identifier.

Item means a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts.

Lot or batch number means an identifying number assigned by the enterprise to a designated group of items, usually referred to as either a lot or a batch, all of which were manufactured under identical conditions.

Machine-readable means an automatic identification technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

Original part number means a combination of numbers or letters assigned by the

enterprise at item creation to a class of items with the same form, fit, function, and interface.

Parent item means the item assembly, intermediate component, or subassembly that has an embedded item with a unique item identifier or DoD recognized unique identification equivalent.

Serial number within the enterprise identifier means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

Serial number within the part, lot, or batch number means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part, lot, or batch number assignment.

Serialization within the enterprise identifier means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

Serialization within the part, lot, or batch number means each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment. The enterprise is responsible for ensuring unique serialization within the part, lot, or batch number within the enterprise identifier.

Type designation means a combination of letters and numerals assigned by the Government to a major end item, assembly or subassembly, as appropriate, to provide a convenient means of differentiating between items having the same basic name and to indicate modifications and changes thereto.

Unique item identifier means a set of data elements marked on items that is globally unique and unambiguous. The term includes a concatenated unique item identifier or a DoD recognized unique identification equivalent.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at [http://www.acq.osd.mil/dpap/pdi/uid/uii\\_types.html](http://www.acq.osd.mil/dpap/pdi/uid/uii_types.html).

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) Unique item identifier. (1) The Contractor shall provide a unique item identifier for the following:

(i) Delivered items for which the Government's unit acquisition cost is \$5,000 or more, except for the following line items:

Contract line, subline, or exhibit line item No.	Item description
.....	.....

(ii) Items for which the Government's unit acquisition cost is less than \$5,000 that are identified

in the Schedule or the following table:

Contract line, subline, or exhibit line item No.	Item description
.....	

\*\*\*TBD on individual Delivery Orders.

(If items are identified in the Schedule, insert "See Schedule" in this table.)

(iii) Subassemblies, components, and parts embedded within delivered items, items with warranty requirements, DoD serially managed reparable and DoD serially managed nonreparable as specified in Attachment Number ----.

(iv) Any item of special tooling or special test equipment as defined in FAR 2.101 that have been designated for preservation and storage for a Major Defense Acquisition Program as specified in Attachment Number ----.

(v) Any item not included in paragraphs (c)(1)(i), (ii), (iii), or

(vi) of this clause for which the contractor creates and marks a unique item identifier for traceability.

(2) The unique item identifier assignment and its component data element combination shall not be duplicated on any other item marked or registered in the DoD Item Unique Identification Registry by the contractor.

(3) The unique item identifier component data elements shall be marked on an item using two dimensional data matrix symbology that complies with ISO/IEC International Standard 16022, Information technology--International symbology specification--Data matrix; ECC200 data matrix specification.

(4) Data syntax and semantics of unique item identifiers. The Contractor shall ensure that--

(i) The data elements (except issuing agency code) of the unique item identifier are encoded within the data matrix symbol that is marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Application Identifiers (AIs) (Format Indicator 05 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology--EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(B) Data Identifiers (DIs) (Format Indicator 06 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology--EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International

Standard 15434), in accordance with the Air Transport Association Common Support Data Dictionary; and

(ii) The encoded data elements of the unique item identifier conform to the transfer structure, syntax, and coding of messages and data formats specified for Format Indicators 05, 06, and 12 in ISO/IEC International Standard 15434, Information Technology-Transfer Syntax for High Capacity Automatic Data Capture Media.

(5) Unique item identifier.

(i) The Contractor shall--

(A) Determine whether to--

(1) Serialize within the enterprise identifier;

(2) Serialize within the part, lot, or batch number; or

(3) Use a DoD recognized unique identification equivalent (e.g. Vehicle Identification Number); and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; DoD recognized unique identification equivalent; and for serialization within the part, lot, or batch number only: Original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in MIL-STD- 130, Identification Marking of U.S. Military Property, latest version;

(C) Label shipments, storage containers and packages that contain uniquely identified items in accordance with the requirements of MIL-STD-129, Military Marking for Shipment and Storage, latest version; and

(D) Verify that the marks on items and labels on shipments, storage containers, and packages are machine readable and conform to the applicable standards. The contractor shall use an automatic identification technology device for this verification that has been programmed to the requirements of Appendix A, MIL-STD-130, latest version.

(ii) The issuing agency code--

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires item unique identification under paragraph (c)(1)(i), (ii), or (iv) of this clause or when item unique identification is provided under paragraph (c)(1)(v), in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report, the following information:

(1) Unique item identifier.

(2) Unique item identifier type.

- (3) Issuing agency code (if concatenated unique item identifier is used).
  - (4) Enterprise identifier (if concatenated unique item identifier is used).
  - (5) Original part number (if there is serialization within the original part number).
  - (6) Lot or batch number (if there is serialization within the lot or batch number).
  - (7) Current part number (optional and only if not the same as the original part number).
  - (8) Current part number effective date (optional and only if current part number is used).
  - (9) Serial number (if concatenated unique item identifier is used).
  - (10) Government's unit acquisition cost.
  - (11) Unit of measure.
  - (12) Type designation of the item as specified in the contract schedule, if any.
  - (13) Whether the item is an item of Special Tooling or Special Test Equipment.
  - (14) Whether the item is covered by a warranty.
- (e) For embedded subassemblies, components, and parts that require DoD unique item identification under paragraph (c)(1)(iii) of this clause, the Contractor shall report as part of, or associated with, the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:
- (1) Unique item identifier of the parent item under paragraph (c)(1) of this clause that contains the embedded subassembly, component, or part.
  - (2) Unique item identifier of the embedded subassembly, component, or part.
  - (3) Unique item identifier type.\*\*
  - (4) Issuing agency code (if concatenated unique item identifier is used).\*\*
  - (5) Enterprise identifier (if concatenated unique item identifier is used).\*\*
  - (6) Original part number (if there is serialization within the original part number).\*\*
  - (7) Lot or batch number (if there is serialization within the lot or batch number).\*\*
  - (8) Current part number (optional and only if not the same as the original part number).\*\*
  - (9) Current part number effective date (optional and only if current part number is used).\*\*
  - (10) Serial number (if concatenated unique item identifier is used).\*\*

(11) Description.

\*\* Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause as follows:

(1) End items shall be reported using the receiving report capability in Wide Area WorkFlow (WAWF) in accordance with the clause at 252.232-7003. If WAWF is not required by this contract, and the contractor is not using WAWF, follow the procedures at <http://dodprocurementtoolbox.com/site/uidregistry/>.

(2) Embedded items shall be reported by one of the following methods--

(i) Use of the embedded items capability in WAWF;

(ii) Direct data submission to the IUID Registry following the procedures and formats at <http://dodprocurementtoolbox.com/site/uidregistry/>; or

(iii) Via WAWF as a deliverable attachment for exhibit line item number (fill in) \_\_\_\_\_, Unique Item Identifier Report for Embedded Items, Contract Data Requirements List, DD Form 1423.

(g) Subcontracts. If the Contractor acquires by subcontract any items for which item unique identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial items.

(End of clause)

## **252.216-7006 ORDERING (MAY 2011)**

(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 contract schedule. Such orders may be issued from date of award through five (5) years thereafter.

(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)(1) If issued electronically, the order is considered "issued" when a copy has been posted to the Electronic Document Access system, and notice has been sent to the Contractor.

(2) If mailed or transmitted by facsimile, a delivery order or task order is considered "issued" when the Government deposits the order in the mail or transmits by facsimile. Mailing includes transmittal by U.S. mail or private delivery services.

(3) Orders may be issued orally only if authorized in the schedule.

(End of Clause)

**252.225-7027 RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (APR 2003)**

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to--

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of to be specified in individual Delivery Orders, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding \$50,000 per foreign military sale case.

(End of Clause)

**252.225-7043 ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 2015)**

(a) Definition. United States, as used in this clause, means, the 50 States, the District of Columbia, and outlying areas.

(b) Except as provided in paragraph (c) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall--

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(c) The requirements of this clause do not apply to any subcontractor that is--



- (1) A foreign government;
  - (2) A representative of a foreign government; or
  - (3) A foreign corporation wholly owned by a foreign government.
- (d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from **Naval Criminal Investigative Service (NCIS), Code 21; telephone, DSN 288-9077 or commercial (202) 433-9077.**

(End of clause)

**252.239-7016 TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991)**

(a) Definitions. As used in this clause--

(1) "Securing" means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) "Sensitive information" means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

(3) "Telecommunications systems" means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit--

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: DLS (comprised of BAE & RCI offices) performance locations

(c) To provide the security, the Contractor shall use Government- approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from the Federal Communications Commission (FCC). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with FCC regulations, practices, and decisions. See DFARs 239.74.

(d) Except as may be provided elsewhere in this contract, the Contractor shall furnish all telecommunications security equipment, devices, techniques, or services necessary to perform this contract. The Contractor must meet ownership eligibility conditions for communications security equipment designated as controlled cryptographic items.

(e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts which require securing telecommunications.

(End of clause)

## **H CLAUSES**

### **H-2**

#### **MIDS JTRS THIRD PARTY TRANSACTIONS**

(a) Definitions. For the purposes of this clause:

"Foreground Information" is defined as any information generated under the Program.

"Information" is defined as any information, knowledge, or data, regardless of form or characteristics including: that of a scientific or technical nature, threat, experimental and test data, designs, semiconductor mask works and topography, improvements, photographs, reports, manuals, specifications, processes, techniques, inventions, technical writings, computer software, sound recordings, pictorial reproductions, drawings and other graphical representations; whether on magnetic tape, in computer memory or in whatever form presented, and whether or not subject to copyright or other legal protection.

"MIDS JTRS Equipment" is defined as program equipment, including hardware and software that is produced or supported through contracts managed by the PMA/PMW 101 MIDS Program Office. MIDS JTRS Equipment may be an end item, a system, or a component. MIDS JTRS Equipment includes all MIDS JTRS Terminal configurations. MIDS JTRS Equipment excludes special tooling and test equipment.

"Third Party" is defined as any entity that desires to obtain MIDS JTRS Equipment and Foreground Information outside of this contract, i.e, not through an order placed under this contract.

"Procuring Contracting Officer" is defined in Section G, Clause G-5 "Designation of Procurement Contracting Officer and Appointment of Ordering Officer(s)" of this contract.

(b) Restriction. The contractor, and all of its subcontractors, are prohibited from selling, entering into a contract to sell, transferring title of, or disclosing or transferring possession of, any MIDS JTRS Equipment or Foreground Information, exclusive of any MIDS JTRS Equipment or Foreground Information that has been approved for public release, to any Third Party without the express written approval by the Procuring Contracting Officer (PCO).

(c) Procedures

(1) If at any time the contractor desires to engage in a transaction restricted by paragraph (b) above, the contractor must submit a formal written request to that effect to the PCO prior to the earlier of (a) forwarding an offer to sell, entering into a contract to sell, or transferring MIDS JTRS Equipment or Foreground Information to a Third Party, or, (b) submittal of a request to the United States Department of State for an export license, if necessary, for such a proposed transaction. The request shall include at a minimum the following information:

- (i) A description of the defense equipment or information to be transferred, including quantity, number of units, unit price, and total value of proposed sale,
- (ii) The identity of the Ministry of Defense of the new recipient (if applicable).
- (iii) The anticipated purpose, end use, and end user of the defense equipment or information.

If the contractor deems its request to be proprietary, the following paragraph shall be included in its request:

This request for sale or transfer of MIDS JTRS Equipment or Foreground Information includes data that shall not be disclosed outside of the United States Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this request. This restriction does not limit the rights of the United States Government to use information contained in this data if it is obtained from another source without restriction.

(2) Upon receipt of a request submitted pursuant to (c)(1), the PCO will forward the request to the U.S. Government representative for consideration and action. The PCO will notify the contractor when the U.S. Government representative decides to approve or disapprove the requested transaction. The contractor may enter into the transaction as specifically requested pursuant to paragraph (c)(1) only upon receipt of PCO notification that the requested transaction has been approved.

(d) For all transactions involving Third Parties, the contractor shall take appropriate measures to ensure that the Third Party does not re-transfer or use the MIDS JTRS Equipment or Foreground Information provided to that Third Party in any manner inconsistent with the purposes approved by the U.S. Government.

(e) The Contracting Officer's written notification of the approval of a transaction restricted by paragraph (b) involving a particular Third Party shall not constitute an approval by the U.S. Government of any desired future transaction restricted by paragraph (b) with either that Third Party or another Third Party.

(f) The contractor acknowledges and agrees that this clause is a material requirement of the contract, and that its failure to follow any term of this clause entitles the Government to terminate the contract for default.

## **H-6**

### **LIMITED RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (APRIL 2010)**

(a) Definition.

"Confidential Business Information," (Information) as used in this clause, is defined as all forms and types of financial, business, economic or other types of information other than technical data

or computer software/computer software documentation, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if -- (1) the owner thereof has taken reasonable measures to keep such Information secret, and (2) the Information derives independent economic value, actual or potential from not being generally known to, and not being readily ascertainable through proper means by, the public. Information does not include technical data, as that term is defined in DFARS 252.227-7013(a)(14), 252.227-7015(a)(4), and 252.227-7018(a)(19). Similarly, Information does not include computer software/computer software documentation, as those terms are defined in DFARS 252.227-7014(a)(4) and 252.227-7018(a)(4).

(b) The Naval Information Warfare Systems Command (NAVWAR) may release to individuals employed by NAVWAR support contractors and their subcontractors Information submitted by the contractor or its subcontractors pursuant to the provisions of this contract. Information that would ordinarily be entitled to confidential treatment may be included in the Information released to these individuals. Accordingly, by submission of a proposal or execution of this contract, the offeror or contractor and its subcontractors consent to a limited release of its Information, but only for purposes as described in paragraph (c) of this clause.

(c) Circumstances where NAVWAR may release the contractor's or subcontractors' Information include the following:

- (1) To other NAVWAR contractors and subcontractors, and their employees tasked with assisting NAVWAR in handling and processing Information and documents in the administration of NAVWAR contracts, such as file room management and contract closeout; and,
- (2) To NAVWAR contractors and subcontractors, and their employees tasked with assisting NAVWAR in accounting support services, including access to cost-reimbursement vouchers.

(d) NAVWAR recognizes its obligation to protect the contractor and its subcontractors from competitive harm that could result from the release of such Information. NAVWAR will permit the limited release of Information under paragraphs (c)(1) and (c)(2) only under the following conditions:

- (1) NAVWAR determines that access is required by other NAVWAR contractors and their subcontractors to perform the tasks described in paragraphs (c)(1) and (c)(2);
- (2) Access to Information is restricted to individuals with a bona fide need to possess;
- (3) Contractors and their subcontractors having access to Information have agreed under their contract or a separate corporate non-disclosure agreement to provide the same level of protection to the Information that would be provided by NAVWAR employees. Such contract terms or separate corporate non-disclosure agreement shall require the contractors and subcontractors to train their employees on how to properly handle the Information to which they will have access, and to have their employees sign company non disclosure agreements certifying that they understand the sensitive nature of the Information and that unauthorized use of the Information could expose their company to significant liability. Copies of such employee non disclosure agreements shall be provided to the Government;
- (4) NAVWAR contractors and their subcontractors performing the tasks described in paragraphs (c)(1) or (c)(2) have agreed under their contract or a separate non-disclosure agreement to not use the Information for any purpose other than performing the tasks described in paragraphs (c)(1) and (c)(2); and,
- (5) Before releasing the Information to a non-Government person to perform the tasks described in paragraphs (c)(1) and (c)(2), NAVWAR shall provide the contractor a list of the company names to which access is being granted, along with a Point of Contact for those entities.

(e) NAVWAR's responsibilities under the Freedom of Information Act are not affected by this clause.

(f) The contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier that requires the furnishing of Information.