

N00039-24-R-4100\_MIDS\_JTRS\_08-13-2024

## U.S. Government Clauses

Prime Contract Number: N00039-24-R-4100

Date of Creation: 08-13-2024

***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.

**FARS CLAUSES INCORPORATED BY REFERENCE**

<b>Reference</b>	<b>Date</b>	<b>Clause</b>
52.202-1	Jun-20	Definitions
52.203-3	Apr-84	Gratuities
52.203-5	May-14	Covenant Against Contingent Fees
52.203-6	Jun-20	Restrictions On Subcontractor Sales To The Government
52.203-7	Jun-20	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	Jun-20	Limitation On Payments To Influence Certain Federal Transactions
52.203-13	Oct-18	Contractor Code of Business Ethics and Conduct
52.203-19	Dec-14	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-2	Mar-21	Security Requirements
52.204-8	May-24	Annual Representations and Certifications
52.204-10	Jun-20	Reporting Executive Compensation and First-Tier Subcontract Awards
52.204-13	Oct-18	System for Award Management Maintenance
52.204-17	Aug-20	Ownership or Control of Offeror
52.204-18	Aug-20	Commercial and Government Entity Code Maintenance
52.204-19	Dec-14	Incorporation by Reference of Representations and Certifications
52.204-20	Aug-20	Predecessor of Offeror
52.204-23	Dec-23	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	Nov-21	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
52.204-27	Jun-23	Prohibition on a ByteDance Covered Application
52.209-3	Sep-89	First Article Approval--Contractor Testing
52.209-6	Nov-21	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.209-7	Oct-18	Information Regarding Responsibility Matters
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	Nov-21	Market Research
52.211-5	Aug-00	Material Requirements
52.211-8	Jun-97	Time of Delivery
52.215-2	Jun-20	Audit and Records--Negotiation
52.215-6	Oct-97	Place of Performance
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
52.215-11 (dev)	Oct-21	Price Reduction for Defective Certified Cost or Pricing Data--Modifications (DEVIATION 2022-O0001)
52.215-12 (Dev)	Oct-21	Subcontractor Certified Cost or Pricing Data (Deviation 20228-O0001)
52.215-13 (Dev)	Oct-21	Subcontractor Certified Cost or Pricing Data - Modifications (Deviation 2022-O0001)
52.215-14	Nov-21	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

Reference	Date	Clause
52.215-19	Oct-97	Notification of Ownership Changes
52.215-21	Nov-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data -- Modifications
52.215-21 Alt III	Oct-97	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data -- Modifications (NOV 2021) - Alternate III
52.215-23	Jun-20	Limitations on Pass-Through Charges
52.216-7	Aug-18	Allowable Cost and Payment
52.216-8	Jun-11	Fixed Fee
52.216-11	Apr-84	Cost Contract--No Fee
52.216-19	Oct-95	Order Limitations
52.216-22	Oct-95	Indefinite Quantity
52.217-7	Mar-89	Option For Increased Quantity-Separately Priced Line Item
52.217-8	Nov-99	Option to Extend Services
52.217-9	Mar-00	Option to Extend the Term of the Contract
52.219-1 (Dev)	Feb-24	Small Business Program Representations (DEVIATION 2024-O0002)
52.219-1 Alt I (Dev)	Feb-24	Small Business Program Representations (DEVIATION 2024-O0002) Alternate I
52.219-4 (Dev)	Oct-22	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DEVIATION 2019-O0003).
52.219-8	Feb-24	Utilization of Small Business Concerns
52.219-9	Sep-23	Small Business Subcontracting Plan
52.219-9 Alt II	Nov-16	Small Business Subcontracting Plan (AUG 2018) Alternate II
52.219-16	Sep-21	Liquidated Damages-Subcontracting Plan
52.222-2	Jul-90	Payment for Overtime Premiums
52.222-3	Jun-03	Convict Labor
52.222-4	May-18	Contract Work Hours and Safety Standards – Overtime Compensation
52.222-19	Feb-24	Child Labor -- Cooperation with Authorities and Remedies
52.222-20	Jun-20	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000
52.222-21	Apr-15	Prohibition Of Segregated Facilities
52.222-22	Feb-99	Previous Contracts And Compliance Reports
52.222-26	Sep-16	Equal Opportunity
52.222-35	Jun-20	Equal Opportunity for Veterans
52.222-36	Jun-20	Equal Opportunity for Workers with Disabilities
52.222-37	Jun-20	Employment Reports on Veterans
52.222-40	Dec-10	Notification of Employee Rights Under the National Labor Relations Act
52.222-50	Nov-21	Combating Trafficking in Persons
52.222-54	May-22	Employment Eligibility Verification
52.223-3	Feb-21	Hazardous Material Identification And Material Safety Data
52.225-13	Feb-21	Restrictions on Certain Foreign Purchases
52.225-18	Aug-18	Place of Manufacture
52.226-8	May-24	Encouraging Contractor Policies To Ban Text Messaging While Driving
52.227-1	Jun-20	Authorization and Consent
52.227-2	Jun-20	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

<b>Reference</b>	<b>Date</b>	<b>Clause</b>
52.228-7	Mar-96	Insurance--Liability To Third Persons
52.229-3	Feb-13	Federal, State And Local Taxes
52.229-11	Jun-20	Tax on Certain Foreign Procurements--Notice and Representation
52.230-2	Jun-20	Cost Accounting Standards
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	Nov-21	Progress Payments
52.232-16 Alt III	Jun-20	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	Mar-23	Providing Accelerated Payments to Small Business Subcontractors
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	Dec-22	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
52.242-17	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
52.243-7	Jan-17	Notification Of Changes
52.244-2	Jun-20	Subcontracts
52.244-5	Dec-96	Competition In Subcontracting
52.244-6	Feb-24	Subcontracts for Commercial Items and Commercial Services
52.245-1	Sep-21	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
52.246-5	Apr-94	Inspection of Services-Cost Reimbursement
52.246-8	May-01	Inspection of Research and Development- Cost Reimbursement

<b>Reference</b>	<b>Date</b>	<b>Clause</b>
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
53.247-53	Apr-84	Freight Classification Description
52.248-1	Jun-20	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
52.252-2	Feb-98	Clauses Incorporated by Reference
52.252-6	Nov-20	Authorized Deviations in Clauses
52.253-1	Jan-91	Computer Generated Forms

**DFARS 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	Jan-23	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
252.203-7002	Dec-22	Requirement to Inform Employees of Whistleblower Rights
252.203-7003	Aug-19	Agency Office of the Inspector General
252.203-7004	Jan-23	Display of Hotline Posters
252.203-7005	Sep-22	Representation Relating to Compensation of Former DoD Officials
252.204-7000	Oct-16	Disclosure Of Information
252.204-7002	Apr-20	Payment For Subline Items Not Separately Priced
252.204-7003	Apr-92	Control Of Government Personnel Work Product
252.204-7004	Jan-23	Antiterrorism Awareness Training for Contractors.
252.204-7005	Sep-22	Representation Relating to Compensation of Former DoD Officials
252.204-7007	Nov-23	Alternate A, Annual Representations and Certifications
252.204-7008	Oct-16	Compliance With Safeguarding Covered Defense Information Controls
252.204-7012 (Dev)	May-24	Safeguarding Covered Defense Information and Cyber Incident Reporting (DEVIATION 2024-O0013 REVISION 1)
252.204-7015	Jan-23	Notice of Authorized Disclosure of Information for Litigation Support
252.204-7016	Dec-19	Covered Defense Telecommunications Equipment or Services -- Representation
252.204-7017	May-21	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services -- Representation
252.204-7018	Jan-23	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
252.205-7000	Jun-23	Provision Of Information To Cooperative Agreement Holders
252.209-7004	May-19	Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country
252.211-7008	Sep-10	Use of Government-Assigned Serial Numbers
252.217-7028	Dec-91	Over And Above Work
252.219-7000	Jun-23	Advancing Small Business Growth
252.219-7003	Dec-19	Small Business Subcontracting Plan (DOD Contracts)
252.222-7006	Jan-23	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
252.223-7008	Jan-23	Prohibition of Hexavalent Chromium
252.225-7001	Feb-24	Buy American And Balance Of Payments Program
252.225-7002	Mar-22	Qualifying Country Sources As Subcontractors
252.225-7003	Oct-20	Report of Intended Performance Outside the United States and Canada--Submission with Offer
252.225-7004	Oct-20	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	Jan-23	Restriction on Acquisition of Certain Articles Containing Specialty Metals
252.225-7012	Apr-22	Preference For Certain Domestic Commodities
252.225-7013	Nov-23	Duty-Free Entry--Basic
252.225-7041	Jun-97	Correspondence in English

<b>Reference</b>	<b>Date</b>	<b>Clause</b>
252.225-7043	Jun-15	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States
252.225-7048	Jun-13	Export-Controlled Items
252.225-7052	May-24	Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten
252.225-7056	Jan-23	Prohibition Regarding Business Operation with the Maduro Regime
252.225-7059	Jun-23	Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region - Representation
252.225-7060	Jun-23	Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region
252.226-7001	Jan-23	Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns
252.227-7013	Mar-23	Rights in Technical Data--Noncommercial Items
252.227-7014	Mar-23	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
252.227-7015	Mar-23	Technical Data--Commercial Items
252.227-7016	Jan-23	Rights in Bid or Proposal Information
252.227-7017	Jan-23	Identification and Assertion of Use, Release, or Disclosure Restrictions
252.227-7019	Jan-23	Validation of Asserted Restrictions--Computer Software
252.227-7025	Jan-23	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
252.227-7028	Jun-95	Technical Data or Computer Software Previously Delivered to the Government
252.227-7030	Mar-00	Technical Data--Withholding Of Payment
252.227-7037	Jan-23	Validation of Restrictive Markings on Technical Data
252.227-7038	Jun-12	Patent Rights--Ownership by the Contractor (Large Business)
252.231-7000	Dec-91	Supplemental Cost Principles
252.232-7004	Oct-14	DoD Progress Payment Rates
252.232-7010	Dec-06	Levies on Contract Payments
252.232-7016	Apr-20	Notice of Progress Payments or Performance-Based Payments
252.234-7002 (Dev)	Sep-15	Earned Value Management System (Deviation 2015-O0017)
252.234-7004	Nov-14	Cost and Software Data Reporting System--Basic
252.239-7001	Jan-08	Information Assurance Contractor Training and Certification
252.239-7016	Dec-91	Telecommunications Security Equipment, Devices, Techniques, And Services
252.239-7018	Dec-22	Supply Chain Risk
252.242-7004	May-11	Material Management And Accounting System
252.242-7005	Feb-12	Contractor Business Systems
252.242-7006	Feb-12	Accounting System Administration
252.243-7001	Dec-91	Pricing Of Contract Modifications
252.243-7002	Dec-22	Requests for Equitable Adjustment
252.244-7000	Nov-23	Subcontracts for Commercial Items or Commercial Services
252.244-7001	May-14	Contractor Purchasing System Administration
252.245-7003	Apr-12	Contractor Property Management System Administration
252.245-7005	Jan-24	Management and Reporting of Government Property
252.246-7001	Mar-14	Warranty Of Data
252.246-7003	Jan-23	Notification of Potential Safety Issues
252.246-7006	Mar-16	Warranty Tracking of Serialized Items

Reference	Date	Clause
252.246-7007	Jan-23	Contractor Counterfeit Electronic Part Detection and Avoidance System
252.246-7008	Jan-23	Sources of Electronic Parts
252.247-7023	Jan-23	Transportation of Supplies by Sea
252.249-7002	Dec-22	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**

### **52.216-19 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--

**N00039-24-R-4100\_MIDS\_JTRS\_08-13-2024**

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:

**N00039-24-R-4100\_MIDS\_JTRS\_08-13-2024**

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)

#### **DFARS CLAUSES INCORPORATED BY FULL TEXT**

**N00039-24-R-4100\_MIDS\_JTRS\_08-13-2024**

## 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 <https://www.acq.osd.mil/asda/dpc/ce/ds/unique-id.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)

**252.239-7016 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-3**

#### **SUBMISSION OF INTERIM AND FINAL INVENTION REPORTS AND NOTIFICATION OF ALL SUBCONTRACTS FOR EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK**

(a) This contract contains either FAR 52.227-11 "Patent Rights--Ownership by the Contractor" clause and DFARS 252.227-7039 "Patents--Reporting of Subject Inventions" or DFARS 252.227-

7038 "Patent Rights--Ownership by the Contractor (Large Business)" clause, or FAR 52.227-13 "Patent Rights--Ownership by the Government" clause.

(b) Under these clauses, the Contractor is required to submit interim and final invention reports and notification to the Government of all subcontracts for experimental, developmental, or research work. The interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work may be submitted on DD Form 882 "Report of Inventions and Subcontracts."

(c) The Contractor shall submit interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work, including negative reports, to:

NAVWAR HQ  
Policy Branch, Code 2.8  
Contract Closeout  
4301 Pacific Highway  
San Diego, CA 92110-3127

(d) The NIWC, Office of Patent Counsel, 3.6000, will represent the Contracting Officer with regard to invention reporting matters arising under the contract.

#### **H-4** **LIMITED RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (DEC 2018)**

(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)(15), 252.227-7015(a)(4), and 252.227-7018(a)(20). Similarly, Information does not include computer software/computer software documentation, as those terms are defined in DFARS 252.227-7014(a)(5) and 252.227-7018(a)(5).

(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.

## **H-5**

### **MIDS WDL FIRST ARTICLE QUALIFICATION REQUIREMENTS**

The contractor is required to have its MIDS WDL variant(s) first article approved by the Government before the contractor may start delivery of full production terminals. Contractors that have previously had their MIDS WDL SF variant(s) qualified shall provide evidence of that first article approval prior to their first delivery under this contract. For any MIDS WDL SF variant(s) for which the contractor has not previously obtained Government first article approval, the Government will approve such variant(s) when all of the following conditions have been met:

- a) The Contractor has submitted a Certificate of Compliance after successful completion of contractor Qualification which was performed in accordance with a Government approved contractor qualification plan/procedure. The certificate shall state, as applicable, that the Contractor's first article meets all of the requirements of the MIDS Functional and Allocated baselines for the MIDS WDL SF Radio.
- b) The Contractor has submitted an EMC Features Approval.
- c) The Contractor has submitted a signed COMSEC Approval for Use.
- d) The Contractor has submitted a signed Air Worthiness certificate for terminals to be

- operated in an airborne environment.
- e) The contractor's terminal has successfully passed any Government executed qualification testing that the Government, at its discretion, deems necessary.

## **H-12 WARRANTY (APPLICABLE TO CLIN 0002)**

This warranty contains the following sections:

- I. Scope
- II. Definitions
- III. Individual Warranty Coverage
- IV. Systemic/Performance Warranty Coverage
- V. Commercial Warranties
- VI. Warranty Procedures/Remedies
- VII. Other Rights and Remedies
- VIII. Warranty Administration
- IX. Warranty Status Reporting
- X. Exclusions
- XI. Presumption of Failure/Defect
- XII. Contractor Obligations
- XIII. Disputes

### **I. SCOPE**

The Contractor warrants that hardware items, firmware, and computer software furnished under this contract will conform to the design and manufacturing requirements, and specified performance requirements specifically delineated in the Contract and any supplementary agreements thereto.

### **II. DEFINITIONS**

- A. Acceptance: The execution of an official document (DD Form 250) by an authorized representative of the Government.
- B. Cosmetic damage: Cosmetic damage includes faded or chipped paint, scratches, minor dents, nicks, or other damage resulting from normal and customary use that does not affect the operational use or maintenance of the item.
- C. Defect: A condition or characteristic that causes an item's performance not to meet the specifications or other requirements of the contract. A defect does not necessarily affect performance.
- D. Design and Manufacturing Requirements: The structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the items being procured under this contract.
- E. Elapsed Time Indicator (ETI): A function of each SRU and LRU that tracks the time (mechanical or electrical) the unit has been operating.
- F. Failure: A breakdown or degradation of operation or function. Failures include items returned to the contractor's facility that are identified as No Evidence of Failure (NEOF) (includes Retest Okay (RTOK), No Fault Found (NFF), Can Not Duplicate (CND) and A-799).
- G. Individual Coverage: Warranty coverage that requires the contractor to correct all failures for any reason (except for Out-of-warranty Items or Non-warranty Items) via individual warranty claim actions for each failure at no additional cost to the Government.
- H. Items: All MIDS WDL Radios to include hardware, firmware; software, and auxiliary items delivered under this contract.

I. No Evidence Of Failure: The term “No Evidence of Failure” or NEOF, as used herein, means a returned item that upon initial checkout by the contractor, successfully completes the performance verification testing defined in the SF2 Acceptance Test Procedure (ATP). NEOF is the same as an RTOK, NFF, CND or A-799.

J. Non-warranty Items: Items that are not warrantied, or are excluded under the exclusion clause of this contract.

K. Notification: Notification is when the contractor receives a customer/user requisition via an automated electronic communications process.

L. Out-of-warranty Items: Items which the timeframe in years exceed the warranty option exercised.

M. Repair: The elimination of a defect or correction of a failure.

N. Repetitive Failure: When at least 3 of the items delivered to the Government have failed with the same root cause, the failures are considered repetitive.

O. Retrofit Plan: A retrofit plan describes how the contractor will implement corrections to defects or systemic failures for all fielded items.

P. Systemic/Performance Coverage: Warranty coverage that requires the contractor to correct the cause of repetitive failures or defects for all items.

Q. Terminal: Includes all MIDS WDL radios ordered under Section B.

R. Turn-Around Time (TAT), Contractor Issue: The Contractor Issue TAT (CITAT) clock begins upon receipt of a customer/user requisition at the contractor site, and ends upon delivery to the customer at either a Continental United States (CONUS) operational site, or a CONUS beach/field detachment for military forwarding to an Outside CONUS (OCONUS) site.

S. Turn-Around Time, Depot Repair: The contractor Depot Repair TAT clock begins upon funding obligation on contract for the repair/retrofit and receipt of the radio at the contractor site, and ends when it is either placed into wholesale inventory or shipped to user.

T. Warranty: Individual and Systemic/Performance Coverage.

U. Turn-Around Time, Warranty: 45 calendar days from receipt of a returned radio at the contractor site.

V. Turn-Around Time, Non-Warranty: 45 calendar days from induction (i.e., date of Purchase Order for repair) of a returned radio at the contractor site.

W. Warranty Repair Turn Around Time (TAT) Withhold: Any non-compliance with the warranty repair TAT shall result in a withhold against the delivery of MIDS WDL radios based on the withhold TAT calculator (see paragraph XIV of this section). Warranty repair TAT is defined as the number of days it takes to repair a warranty terminal from the day it is received by the contractor until the day the repair is completed and a DD Form 1149 is signed.

X. Repair Maintenance Activity (RMA): An RMA will be provided with each radio returned by the Government to the contractor for repair and/or retrofit activity. The RMA will NOT be a requirement for terminal shipment to the contractor and upon submittal of the RMA for processing, the contractor has 5 business days to respond with a RMA number. Should the contractor fail to respond within the five (5) day timeframe, the induction clock for Turn Around Time (TAT) will start.

Y. Radios under warranty repair with the contractor will receive a day for day warranty extension if repairs are in excess of the 45 day Turn-Around Time established under this contract. The contractor will track any warranty extension owed on a terminal by terminal basis and report this information in the contractor database.

### **III. INDIVIDUAL WARRANTY COVERAGE**

Warranty for individual coverage begins upon acceptance (DD-250). Failures are covered under individual warranty coverage. Radios shall be warrantied for four (4) years from the date of acceptance (DD-250).

#### **IV. SYSTEMIC/PERFORMANCE WARRANTY COVERAGE**

Warranty for systemic/performance coverage begins upon acceptance (DD250). Radios are warrantied for systemic/performance coverage for a period of four (4) years from acceptance. Repetitive failures and defects are covered under systemic/performance coverage and require the contractor to implement a retrofit plan to repair all affected items at no additional cost to the Government.

#### **V. COMMERCIAL WARRANTIES**

The contractor shall provide the Government with any commercial warranties received from his or her suppliers or subcontractors even if they extend beyond the warranty period listed in Table 1.

#### **VI. WARRANTY PROCEDURES/REMEDIES**

##### **A. Individual Coverage:**

The Government will return any item experiencing a failure to the contractor's repair facility. The contractor shall provide the materials and services necessary to repair or replace the item at no additional cost to the Government within the specified Turn-Around Time. All repaired items, or items identified as NEOF, shall successfully pass both the functional portion, three (3) consecutive, failure-free thermal cycles and ten (10) minutes of random vibration on the x-axis of the Environmental Stress Screening (ESS) portion of the Government approved ATP applicable to the item prior to its return.

The contractor shall ship all repaired items in accordance with the shipping instructions issued by the COR/ACOR. Upon shipment of the repaired item, the contractor shall provide the shipment tracking information (tracking number) of the shipment to the applicable addressees, as designated by the COR/ACOR in the shipping instructions, not later than Close of Business (COB) the same day of the shipment. The contractor shall provide copies of all related shipping documentation to the applicable addressees, as designated by the COR/ACOR in the shipping instructions, not later than COB the following business day after the shipment.

If the contractor has any disagreement with the Government regarding a returned item, the contractor shall proceed with the repair/replacement of the item within the specified Turn-Around Time and may invoke his or her rights in accordance with the "Disputes" clause. If the contractor has reason to believe that returned items are not subject to the warranty provisions of this contract, the contractor shall notify the Government within three (3) working days of receipt of item for repair. Failure to do so will be deemed a waiver by the contractor of any and all remedies to which it otherwise would have been entitled to under the "Disputes" clause.

##### **B. Systemic/Performance Coverage:**

The contractor shall provide and implement a retrofit plan that provides a detailed technical description of how repetitive failures and defects will be corrected, and an explanation of how fielded units will be repaired. The contractor shall coordinate the implementation of the corrective action plan with the Government prior to beginning corrective action. Following such coordination, the contractor shall submit the retrofit plan to the Procuring Contracting Officers (PCOs), within 45 days after any repetitive failures or defects are identified. The contractor is liable for all costs associated with the corrective action, including the cost of preparing the plan and transportation costs to effect repair/replacement of items. The retrofit plan shall provide for the repair, replacement or retrofit of all delivered, warrantied items under this contract. Upon approval of the



refit plan by the PCOs, the contractor shall perform all actions necessary to correct the defect in accordance with the refit plan. Updates to technical documentation and software releases shall be accomplished in accordance with the requirements in effect at the time the item is accepted by the Government or as agreed to by the Government at the time that the corrective action is made. In the event the contractor believes there has been a change to the requirements as a result of implementing the refit plan, the contractor shall notify the Government in accordance with the applicable Changes clause (FAR 52.243-1, 52.243-1 Alt I, 52.243-1 Alt II, 52.243-2, 52.243-2 Alt I, 52.243-2 Alt II).

## **VII. OTHER RIGHTS AND REMEDIES**

The rights and remedies of the Government provided for in this warranty do not limit, but are in addition to, the rights the Government has under any other clause of this contract. The requirements of this warranty do not limit the Government's rights under the inspection and acceptance provisions of the contract.

This warranty shall not be voided by any Government performed repair of any warranted item when accomplished in accordance with the Government maintenance support concepts.

The Government shall not be responsible for any extension or delay in the scheduled deliveries or periods under this contract as a result of the contractor's obligation to repair or replace defective or failed items. There shall not be any adjustments of the delivery schedule or periods of performance as a result of the repair or replacement of defective or failed items, unless provided for by the inclusion of a modification, with adequate consideration to the Government in this contract.

The Government's rights under this warranty shall survive final payment.

## **VIII. WARRANTY ADMINISTRATION**

- A. The contractor and Government will administer the warranty through the requirements specified herein and the contract.
- B. Disagreements on warranty issues shall be settled pursuant to the "Disputes" clause of the contract. The contractor shall repair/replace all returned items in accordance with the terms of this warranty while the dispute is being resolved.

## **IX. WARRANTY STATUS REPORTING**

- A. The contractor shall report on warranty status via the contractor database, the weekly status report and during the weekly program status meetings. Reports will highlight each terminal in warranty at the contractor depot repair facility exceeding the 45 day turn around time.
- B. A list of outstanding areas of disagreement regarding warranty issues to be addressed shall be included in all Program Management Reviews (PMRs) and Joint Logistics Working Group (JLWG) meetings. In addition, a detailed explanation of why the claim is disputed and the proposed action to resolve the disputed claim shall be reported.

## **X. EXCLUSIONS**

**N00039-24-R-4100\_MIDS\_JTRS\_08-13-2024**

A. The contractor shall prove to the satisfaction of the PCOs by a preponderance of the evidence that an item returned for repair is excluded from warranty due to one of the following exclusions:

-Combat damage

-Damage or failures, that are beyond the control of and not attributable to the contractor, that are caused by:

-Willful misconduct

-Abuse

-improper user installation or application (e.g. improper cabling, rack mounting, power input or exposure to

-environmental conditions beyond specified capabilities), this does not include bricking a terminal when procedures were followed.

-maintenance not executed in accordance with the Government maintenance concept

-negligence in transportation (with the exception of transportation covered under warranty paragraph XII), handling, or storage

-use by non-contractor personnel of shipping containers other than those specified per ASTM D3951-95 "Standard Practice for Commercial Packaging", if use of such container resulted in damage

-catastrophic damage such as fire, flood or explosion (not attributable to the warranted item)

-receipt of an item returned for correction at the contractor's facility with the timeframe in years, exceeding the warranty period

-act of God

B. If the contractor considers that a returned item is covered by one of the exclusions listed above, the contractor shall request the PCOs to perform inspection of the items that the contractor considers subject to exclusion.

If the PCOs determine that the repair or replacement is excluded, repair or replacement of the items may be accomplished at Government expense under separate order. All repaired items shall continue to be warranted for the remaining warranty period at no change in the contract price.

The failure of the PCOs and the contractor to reach an agreement on exclusion shall be considered a Dispute within the meaning of the "Disputes" clause. The contractor shall proceed with the repair/replacement upon written direction of the PCOs, even if a disagreement exists.

C. With respect to GFP, the contractor's warranty shall extend only to the proper installation of the GFP, so as not to degrade the performance or reliability of the GFP. If the contractor performs some modification or other work on such property, then the contractor's warranty shall extend to such modification or other work performed on the GFP.

## **XI. PRESUMPTION OF FAILURE/DEFECT**

If the Procuring Contracting Officers issue a Final Decision pursuant to the "Disputes" clause of this contract finding that none of the exclusions identified in X of this clause was (were) the cause(s) of the defects or failures of any hardware items, firmware or computer software to

perform in accordance with all terms and conditions of the contract during the period identified in sections III and IV of this clause, and the Contractor subsequently files an appeal from that Final Decision with any court or board of contract appeals, on appeal the contractor shall have the burden of proving beyond a preponderance of the evidence that one or more of the exclusions identified in section X of this clause was (were) the cause(s) of the defects or failure of any hardware items, firmware or computer software to perform in accordance with all terms and conditions of the contract during the period identified in sections III and IV of this clause.

The contractor shall have this burden of proof regardless of which party may have possession, custody or control over any evidence (documentary or testimonial) which would tend to prove or disprove the existence of any of the exclusions identified in section X of this clause, and regardless of whether the matter is before the Procuring Contracting Officers, a court or a board of contract appeals.

The parties agree that unless the contractor can sustain this burden of proof, the warranty described in this clause shall be applicable to the hardware items, firmware and computer software delivered under this contract, which failed or are defective. Likewise, where the Procuring Contracting Officers make a determination under section IV of this clause that the failures were systemic, the contractor shall have the burden of proving to the satisfaction of the Procuring Contracting Officers, a court or a board of contract appeals, by a preponderance of the evidence, that the defects or failures were not systemic, regardless which party may have possession, custody or control over any evidence (documentary or testimonial) which would tend to prove or disprove that the defects or failures experienced were caused by systemic defects or failures.

If it is later determined by the Procuring Contracting Officers, a court or a board of contract appeals that one or more of the exclusions identified in section X of this clause was (were) the cause(s) of the failures or defects of any hardware items, firmware or computer software to perform in accordance with all terms and conditions of the contract during the period identified in sections III and IV of this clause, the contract price will be equitably adjusted.

## **XII. CONTRACTOR OBLIGATIONS**

### **Labeling or Plating**

The contractor shall provide contractor data markings for identification of each radio in accordance with the requirements contained in Section D.

### **Transportation costs**

The contractor shall be responsible for the cost of transporting warranted items back to the Government designated point of delivery. Shipment shall be made by the most expedient means available. Preservation, packaging, packing and handling of repaired items shall be in accordance with the requirements contained in Section D.

## **XII. DISPUTES**

The rights and remedies of the Government provided in this warranty are in addition to, and do not limit, any right the Government may have under any other clause of this contract. Disputes arising under this warranty will be resolved in accordance with the Section I clause of this contract entitled "Disputes."