



**E104 PART E, *Alternate III*, Flowdown Document  
ESAero**

**If E104 PART E, *Alternate III*, Flowdown Document is specified in this Purchase Order, the following terms apply to this order:**

**Flowdown Document  
W31P4Q-24-C-0018**

**Prime Contract Number: W31P4Q-24-C-0018  
DPAS Rating: DO-A7  
Date of Creation: Sep 25, 2024**

*The following customer contract requirements apply to this Purchase Order to the extent indicated below 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. Upon Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR or DFARS provision or clause may be accessed electronically at these addresses: <http://farsite.hill.af.mil/> or <https://www.acquisition.gov/far/>:*

In all provisions and clauses listed herein, terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the Buyer's higher-tier subcontract under which this Purchase Order is a subcontract (the "Government 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 "Seller", "Subcontractor" shall mean "Seller'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 Government 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. Seller 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 Seller 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.

**CLAUSES INCORPORATED BY REFERENCE:**

<b>Clause Number</b>	<b>Title</b>	<b>Applicability (Reference to "Purchase Orders" includes underlying Solicitations)</b>
FAR 52.203-5	I-2 Covenant Against Contingent Fees (May 2014)	Applicable to Orders over the Simplified Acquisition Threshold.
FAR 52.203-6	I-3 Restrictions on Subcontractor Sales to the Government (Jun 2020)	Applicable to all Orders over the Simplified Acquisition Threshold.
FAR 52.203-7	I-4 Anti-Kickback Procedures (Jun 2020)	Applicable to all Orders that exceed \$150,000, excepting paragraph (c)(1).
FAR 52.203-12	I-7 Limitation on Payments to Influence Certain Federal Transactions (Jun 2020)	Applicable to all Orders exceeding \$150,000.

FAR 52.204-2	I-9 Security Requirements (Mar 2021)	Applicable to all Orders that involve access to classified information. Any reference to the Changes clause is excluded.
FAR 52.204-10	I-10 Reporting Executive Compensation and First- Tier Subcontract Awards (Jun 2020)	Applicable to all Orders when the Buyer is the Prime Contractor and the Order exceeds \$30,000. Substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.
FAR 52.211-5	I-17 Material Requirements (Aug 2000)	Applicable to Orders for supplies that are not Commercial Items.
FAR 52.215-2	I-19 Audit and Records – Negotiation (Jun 2020)	Applicable to the following Orders that exceed the Simplified Acquisition Threshold: (i) that are cost-reimbursement, incentive, time-and- materials, labor-hour, or price- redeterminable type or any combination of these, (ii) for which certified cost or pricing data are required; or (iii) that require Seller to furnish reports as discussed in paragraph (e) of the clause.
FAR 52.215-10	I-21 Price Reduction for Defective Certified Cost or Pricing Data (Aug 2011)	Applicable to all Orders that require the Seller to provide certified pricing data. This clause does not apply to Orders for commercial items or if the Seller qualifies for any of the other exemptions in FAR 15.403-1.
FAR 52.215-14	I-22 Integrity of Unit Prices (Nov 2021)	Applicable to Orders exceeding the Simplified Acquisition Threshold less paragraph (b) in the clause, except for construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial products and commercial services; and petroleum products.
FAR 52.215-15	I-23 Pension Adjustments and Asset Reversions (Oct 2010)	Applicable to Orders for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to Part 31.
FAR 52.215-23	I-26 Limitations on Pass-Through Charges (Jun 2020)	Applicable to all cost-reimbursement Orders that exceed the Simplified Acquisition Threshold; except if the Buyers' prime contract is with the DoD, then applicable to all cost- reimbursement Orders and all fixed- price Orders, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.
FAR 52.216-8	I-27 Fixed Fee (Jun 2011)	Applicable to cost plus fixed fee Orders.
FAR 52.222-20	I-33 Contracts for Materials, Supplies, Articles, and Equipment (Jun 2020)	Applicable to Orders over \$15,000 for the manufacture or furnishing of materials, supplies, articles or equipment.
FAR 52.222-21	I-34 Prohibition of Segregated Facilities (Apr 2015)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6. Foreign Sellers: Applicable to Orders except to the extent that work under the Order will be performed outside the United States or by employees that are not recruited within the United States to work on the Order. “United States”, as used in this parenthetical, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

FAR 52.222-26	I-35 Equal Opportunity (Sep 2016)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, that are not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended. Foreign Sellers: Applicable to Orders except to the extent that work under the Order will be performed outside the United States or by employees that are not recruited within the United States to work on the Order. "United States", as used in this parenthetical, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
FAR 52.222-37	I-36 Employment Reports on Veterans (Jun 2020)	Applicable to all Orders over \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary.
FAR 52.222-50	I-38 Combating Trafficking in Persons (Nov 2021)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, except that the requirements in paragraph (h) of the clause apply only to (i) supplies that are other than commercially available off-the-shelf items that are acquired outside the United States, or for services to be performed outside the United States, and (ii) that exceed \$550,000 in value.
FAR 52.222-54	I-39 Employment Eligibility Verification (May 2022)	Applicable to all Orders (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,500; and (iii) includes work performed in the United States. Foreign Sellers: "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.
FAR 52.222-55	I-40 Minimum Wages Under Executive Order 13658 (Jan 2022)	Applicable to all Orders regardless of dollar value, including for Commercial Items pursuant to 52.244-6, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.
FAR 52.222-62	I-41 Paid Sick Leave Under Executive Order (Jan 2022)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute and are to be performed in whole or in part in the United States.
FAR 52.225-13	I-42 Restrictions on Certain Foreign Purchases (Feb 2021)	Applicable to all Orders.
FAR 52.226-8	I-44 Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020)	
FAR 52.227-1	I-45 Authorization and Consent (Jun 2020)	Applicable to all Orders over the Simplified Acquisition Threshold.

FAR 52.227-2	I-46 Notice and Assistance Regarding Patent and Copyright Infringement (Jun 2020)	Applicable to all Orders over the Simplified Acquisition Threshold.
FAR 52.230-6	I-48 Administration of Cost Accounting Standards (Jun 2010)	Applicable when stated in the Order.
FAR 52.232-39	I-55 Unenforceability of Unauthorized Obligations (Jun 2013)	Applicable to all Orders involving EULA, TOS, or similar software agreement.
FAR 52.243-2	I-65 Changes – Cost Reimbursement (Aug 1987)	Applicable to cost-reimbursement Orders
FAR 52.243-6	I-66 Change Order Accounting (Apr 1984)	Applicable to Orders for supply and research and development contracts of significant technical complexity.
FAR 52.245-1	I-69 Government Property (Sep 2021)	Applicable to all Orders when Government property is acquired or furnished (see PT- 001).
FAR 52.245-9	I-70 Use and Charges (Apr 2012)	Applicable to all Orders when Government property is acquired or furnished (see PT- 001).
FAR 52.247-63	I-72 Preference for U.S. Flag Air Carriers (Jun 2003)	Applicable to all Orders that involve international air transportation.
FAR 52.248-1	I-73 Value Engineering (Jun 2020)	Applicable to Orders at or above the simplified acquisition threshold.
FAR 52.249-2	I-74 Termination For Convenience Of The Government (Fixed-Price) (Apr 2012)	Applicable to all Orders. The usual substitution of the parties in which “Government” means “Buyer”, “Contracting Officer” means “Buyer’s Purchasing Representative”, and “Contractor” means “Seller” is applicable to this clause except that any express obligation to transfer or assign title to property shall be modified such that “Government” means “Government or Buyer”. (In paragraph (d) the term “45 days” is changed to “90 days.” The term “one-year” in paragraph (e) is changed to “six months.” The term “90 days” in paragraph (l) is changed to “forty-five days.”
DFARS 252.203-7000	I-79 Requirements Relating to Compensation of Former DoD Officials (Sep 2011)	Applicable to all Orders.
DFARS 252.203- 7001	I-80 Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies (Jan 2023)	
DFARS 252.204-7000	I-84 Disclosure of Information (Oct 2016)	Applicable to all Orders when Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.
DFARS 252.204-7009	I-88 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (Jan 2023)	

DFARS 252.204-7012	I-89 Safeguarding Covered Defense Information and Cyber Incident Reporting (Jan 2023)	
DFARS 252.204-7015	I-90 Notice of Authorized Disclosure of Information for Litigation Support (Jan 2023)	
DFARS 252.204-7018	I-91 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (Jan 2023)	
DFARS 252.219-7003	I-99 Small Business Subcontracting Plan (DOD Contracts) – Basic (Dec 2019)	Applicable to all Orders to Sellers that participate in the Test Program described in DFARS 219.702-70, if the subcontract offers further subcontracting opportunities and is expected to exceed the applicable threshold specified in FAR 19.702(a) on the date of subcontract/Order award.
DFARS 252.219-7004	I-100 Small Business Subcontracting Plan (Test Program) (Dec 2022)	
DFARS 252.223-7003	I-103 Change in Place of Performance – Ammunition and Explosives (Dec 1991)	Applicable to all Orders that involve ammunition or explosives.
DFARS 252.223-7004	I-104 Drug-Free Work Force (Sep 1988)	Applicable to Orders except when (i) performance or partial performance will be outside the United States and its outlying areas. (ii) the value of the acquisition is at or below the Simplified Acquisition Threshold, or (iii) the Order is for Commercial Items.
DFARS 252.225-7009	I-107 Restriction on Acquisition of Certain Articles Containing Specialty Metals (Jan 2023)	
DFARS 252.225-7012	I-108 Preference for Certain Domestic Commodities (Apr 2022)	Applicable to all Orders exceeding \$150,000, including those using FAR part 12 procedures for the acquisition of commercial items. [Applies at any dollar value, only for the acquisitions athletic footwear purchased by DoD for use by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces].
DFARS 252.225-7048	I-109 Export-Controlled Items (Jun 2013)	Applicable to all Orders.
DFARS 252.225-7058	I-112 Postaward Disclosure of Employment of Individuals Who Work in The People’s Republic of China (Jan 2023)	
DFARS 252.225-7060	I-113 Prohibition on Certain Procurements from The Xinjiang Uyghur Autonomous Region (Jun 2023)	
DFARS 252.227-7013	I-114 Rights in Technical Data-Other Than Commercial Products and Commercial Services (Mar 2023)	
DFARS 252.227-7014	I-115 Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation (Mar 2023)	

DFARS 252.227-7027	I-120 Deferred Ordering of Technical Data or Computer Software (Apr 1988)	Applicable to all Orders.
DFARS 252.231-7000	I-123 Supplemental Cost Principles (Dec 1991)	Applicable to Orders that are subject to the principles and procedures described in FAR subparts 31.1, 31.2, 31.6, or 31.7.
DFARS 252.234-7004	I-126 Cost and Software Data Reporting System – Basic (Nov 2014)	Applicable to Orders that exceed \$50 million.

**CLAUSES INCORPORATED IN FULL TEXT:**

**52.203-19 I-8 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS JAN 2017**

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

*Internal confidentiality agreement or statement* means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

*Subcontract* means any contract as defined in [subpart 2.1](#) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders

*Subcontractor* means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (*e.g.*, agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113- 235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

(End of clause)

**52.204-23 I-14 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES DEC 2023**

(a) *Definitions.* As used in this clause—

*Kaspersky Lab covered article* means any hardware, software, or service that—

- (1) Is developed or provided by a Kaspersky Lab covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

*Kaspersky Lab covered entity* means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab, including any change in name, e.g., “Kaspersky”;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any Kaspersky Lab covered article. The Contractor is prohibited from—

- (1) Providing any Kaspersky Lab covered article that the Government will use on or after October 1, 2018; and
- (2) Using any Kaspersky Lab covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies a Kaspersky Lab covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 3 business days from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a Kaspersky Lab covered article, any reasons that led to the use or submission of the Kaspersky Lab covered article, and any additional efforts that will be incorporated to prevent future use or submission of Kaspersky Lab covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

## **52.209-6 I-15 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT NOV 2021**

(a) *Definition.*

*Commercially available off-the-shelf (COTS) item*, as used in this clause—

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” in Federal Acquisition Regulation (FAR) [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of the threshold specified in FAR [9.405-2\(b\)](#) on the date of subcontract award, with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed the threshold specified in FAR [9.405-2\(b\)](#) on the date of subcontract award, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor’s knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.



- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) *Subcontracts*. Unless this is a contract for the acquisition of commercial products or commercial services, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

- (1) Exceeds the threshold specified in FAR [9.405-2](#)(b) on the date of subcontract award; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

(End of clause)

#### **52.215-18 I-24 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS JUL 2005**

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by [31.205-6](#)(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR [15.408](#)(j).

(End of clause)

#### **52.215-21 I-25 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA MODIFICATIONS NOV 2021**

(a) Exceptions from certified cost or pricing data.

(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth in Federal Acquisition Regulation (FAR) [15.403-4](#)(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in paragraphs (a)(1)(i) and (ii) of this clause. If the threshold for submission of certified cost or pricing data specified in FAR [15.403-4](#)(a)(1) is adjusted for inflation as set forth in FAR [1.109](#)(a), then pursuant to FAR [1.109](#)(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered*. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial products or commercial services*.

(A) If—

(1) The original contract or subcontract was granted an exception from certified cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial product or commercial service; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial product or commercial service, to a contract or subcontract for the acquisition of other than a commercial product or commercial service.

(B) For a commercial product and commercial service exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment



manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

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

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in [Table 15-1](#) of FAR [15.408](#), which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in [Table 15-1](#) are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR [15.406-2](#).

(End of clause)

## **52.222-40 I-37 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT. DEC 2010**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be-

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart [9.4](#). Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.



- (2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.
  - (3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.
  - (4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.
- (End of clause)

#### **52.232-40 I-56 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS MAR 2023**

- (a) (1) In accordance with [31 U.S.C. 3903](#) and [10 U.S.C. 3801](#), within 15 days after receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor. (2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.
  - (b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.
  - (c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial products or commercial services.
- (End of clause)

#### **52.244-6 I-68 SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES FEB 2024**

- (a) *Definitions.* As used in this clause—  
*Commercial product, commercial service and commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR) [2.101](#).  
*Subcontract* includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.
- (c)
  - (1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:
    - (i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR [3.1004\(a\)](#) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
    - (ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111- 5), if the subcontract is funded under the Recovery Act.
    - (iii) [52.203-17](#), Contractor Employee Whistleblower Rights (Nov 2023) ( [41 U.S.C. 4712](#)); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR [3.900\(a\)](#).
    - (iv) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).
    - (v) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (Nov 2021) , other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).
    - (vi) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (Dec 2023) (Section 1634 of Pub. L. 115-91).
    - (vii) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
    - (viii) [52.204-27](#), Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).
    - (ix)
      - (A) [52.204-30](#), Federal Acquisition Supply Chain Security Act Orders—Prohibition. (Dec 2023) ( [Pub. L. 115–390](#), title II).
      - (B) Alternate I (Dec 2023) of [52.204-30](#).



- (x) [52.219-8](#), Utilization of Small Business Concerns (Feb 2024) ( [15 U.S.C.637](#)(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.
- (xi) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).
- (xii) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O.11246).
- (xiii) [52.222-35](#), Equal Opportunity for Veterans (Jun 2020) (38 U.S.C.4212(a));
- (xiv) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jun 2020)(29 U.S.C.793).
- (xv) [52.222-37](#), Employment Reports on Veterans (Jun 2020) (38 U.S.C.4212).
- (xvi) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xvii)
- (A) [52.222-50](#), Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O. 13627).
- (B) Alternate I (Mar 2015) of [52.222-50](#)(22 U.S.C. chapter 78 and E.O. 13627).
- (xviii) [52.222-55](#), Minimum Wages for Contractor Workers under Executive Order 14026 (Jan 2022), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).
- (xix) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).
- (xx)
- (A) [52.224-3](#), Privacy Training (Jan 2017) ( [5 U.S.C. 552a](#)) if flow down is required in accordance with [52.224-3](#)(f).
- (B) Alternate I (Jan 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3](#)(f) and the agency specifies that only its agency- provided training is acceptable).
- (xxi) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).
- (xxii) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) , if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).
- (xxiii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) ( [46 U.S.C. 55305](#) and 10 U.S.C.2631), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#).
- (2) While not required, the Contractor may flow down to subcontracts for commercial products or commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

### **252.203-7002 I-81 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS DEC 2022**

- (a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 4701, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.
- (b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

### **252.203-7004 I-83 DISPLAY OF HOTLINE POSTERS JAN 2023**

- (a) *Definition.* As used in this clause—  
“United States” means the 50 States, the District of Columbia, and outlying areas.
- (b) *Display of hotline poster(s).*
- (1)(i) The Contractor shall display prominently the DoD fraud, waste, and abuse hotline poster prepared by the DoD Office of the Inspector General, in effect at time of contract award, in common work areas within business segments performing work under Department of Defense (DoD) contracts.
- (ii) For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster, such as private employee written instructions and briefings.
- (2) If the contract is funded, in whole or in part, by Department of Homeland Security (DHS) disaster relief funds and the work is to be performed in the United States, the DHS fraud hotline poster shall be displayed in addition to the DoD hotline poster. If a display of a DHS fraud hotline poster is required, the Contractor may obtain such poster from—
  - (i) DHS Office of Inspector General/MAIL STOP 0305, Attn: Office of Investigations – Hotline, 245 Murray Lane SW, Washington, DC 20528-0305; or



- (ii) Via the internet at [https://www.oig.dhs.gov/assets/Hotline/DHS\\_OIG\\_Hotline-optimized.jpg](https://www.oig.dhs.gov/assets/Hotline/DHS_OIG_Hotline-optimized.jpg).
- (c)(1) The DoD hotline poster may be obtained from: Defense Hotline, The Pentagon, Washington, D.C. 20301-1900, or is also available via the internet at <https://www.dodig.mil/Resources/Posters-and-Brochures/>.
- (2) If a significant portion of the employee workforce does not speak English, then the poster is to be displayed in the foreign languages that a significant portion of the employees speak.
- (3) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the required poster at the website.
- (d) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Defense Federal Acquisition Regulation Supplement [203.1004](#) (b)(2)(ii) on the date of subcontract award, except when the subcontract is for the acquisition of a commercial product or commercial service.

(End of clause)

## 252.204-7020 I-92 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS NOV 2023

### (a) *Definitions*.

“Basic Assessment” means a contractor’s self-assessment of the contractor’s implementation of NIST SP 800-171 that—

- (1) Is based on the Contractor’s review of their system security plan(s) associated with covered contractor information system(s);
- (2) Is conducted in accordance with the NIST SP 800-171 DoD Assessment Methodology; and
- (3) Results in a confidence level of “Low” in the resulting score, because it is a self-generated score.

“Covered contractor information system” has the meaning given in the clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this contract.

“High Assessment” means an assessment that is conducted by Government personnel using NIST SP 800-171A, Assessing Security Requirements for Controlled Unclassified Information that—

- (1) Consists of—
  - (i) A review of a contractor’s Basic Assessment;
  - (ii) A thorough document review;
  - (iii) Verification, examination, and demonstration of a Contractor’s system security plan to validate that NIST SP 800-171 security requirements have been implemented as described in the contractor’s system security plan; and
  - (iv) Discussions with the contractor to obtain additional information or clarification, as needed; and
- (2) Results in a confidence level of “High” in the resulting score.

“Medium Assessment” means an assessment conducted by the Government that—

- (1) Consists of—
  - (i) A review of a contractor’s Basic Assessment;
  - (ii) A thorough document review; and
  - (iii) Discussions with the contractor to obtain additional information or clarification, as needed; and
- (2) Results in a confidence level of “Medium” in the resulting score.

(b) *Applicability*. This clause applies to covered contractor information systems that are required to comply with the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, in accordance with Defense Federal Acquisition Regulation System (DFARS) clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, of this contract.

(c) *Requirements*. The Contractor shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800-171 DoD Assessment, as described in NIST SP 800 171 DoD Assessment Methodology at <https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf>, if necessary.

(d) *Procedures*. Summary level scores for all assessments will be posted in the Supplier Performance Risk System (SPRS) () to provide DoD Components visibility into the summary level scores of strategic assessments.

(1) *Basic Assessments*. A contractor may submit, via encrypted email, summary level scores of Basic Assessments conducted in accordance with the NIST SP 800-171 DoD Assessment Methodology to for posting to SPRS.

(i) The email shall include the following information:

- (A) Version of NIST SP 800-171 against which the assessment was conducted.
- (B) Organization conducting the assessment (e.g., Contractor self-assessment).
- (C) For each system security plan (security requirement 3.12.4) supporting the performance of a DoD contract—
  - (1) All industry Commercial and Government Entity (CAGE) code(s) associated with the information system(s) addressed by the system security plan; and
  - (2) A brief description of the system security plan architecture, if more than one plan exists.
- (D) Date the assessment was completed.
- (E) Summary level score (e.g., 95 out of 110, NOT the individual value for each requirement).



- (F) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.
- (ii) If multiple system security plans are addressed in the email described at paragraph (b)(1)(i) of this section, the Contractor shall use the following format for the report:

System Security Plan	CAGE Codes supported by this plan	Brief description of the n plan architecture	Date of assessment	Total Score	Date score of 110 will achieved
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(2) Medium and High Assessments. DoD will post the following Medium and/or High Assessment summary level scores to SPRS for each system security plan assessed:

- (i) The standard assessed (e.g., NIST SP 800-171 Rev 1).
- (ii) Organization conducting the assessment, e.g., DCMA, or a specific organization (identified by Department of Defense Activity Address Code (DoDAAC)).
- (iii) All industry CAGE code(s) associated with the information system(s) addressed by the system security plan.
- (iv) A brief description of the system security plan architecture, if more than one system security plan exists.
- (v) Date and level of the assessment, i.e., medium or high.
- (vi) Summary level score (e.g., 105 out of 110, not the individual value assigned for each requirement).
- (vii) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

(e) *Rebuttals.*

(1) DoD will provide Medium and High Assessment summary level scores to the Contractor and offer the opportunity for rebuttal and adjudication of assessment summary level scores prior to posting the summary level scores to SPRS (see SPRS User’s Guide [https://www.sprs.csd.disa.mil/pdf/SPRS\\_Awardee.pdf](https://www.sprs.csd.disa.mil/pdf/SPRS_Awardee.pdf)).

(2) Upon completion of each assessment, the contractor has 14 business days to provide additional information to demonstrate that they meet any security requirements not observed by the assessment team or to rebut the findings that may be of question.

(f) *Accessibility.*

(1) Assessment summary level scores posted in SPRS are available to DoD personnel, and are protected, in accordance with the standards set forth in DoD Instruction 5000.79, Defense-wide Sharing and Use of Supplier and Product Performance Information (PI).

(2) Authorized representatives of the Contractor for which the assessment was conducted may access SPRS to view their own summary level scores, in accordance with the SPRS Software User’s Guide for Awardees/Contractors available at.

(3) A High NIST SP 800-171 DoD Assessment may result in documentation in addition to that listed in this clause. DoD will retain and protect any such documentation as “Controlled Unclassified Information (CUI)” and intended for internal DoD use only. The information will be protected against unauthorized use and release, including through the exercise of applicable exemptions under the Freedom of Information Act (e.g., Exemption 4 covers trade secrets and commercial or financial information obtained from a contractor that is privileged or confidential).

(g) *Subcontracts.*

(1) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services (excluding commercially available off-the-shelf).

The Contractor shall not award a subcontract or other contractual instrument, that is subject to the implementation of NIST SP 800–171 security requirements, in accordance with DFARS clause 252.204–7012 of this contract, unless the subcontractor has completed, within the last 3 years, at least a Basic NIST SP 800–171 DoD Assessment, as described in <https://www.acq.osd.mil/asda/dpc/cp/cyber/docs/safeguarding/NIST-SP-800-171-Assessment-Methodology-Version-1.2.1-6.24.2020.pdf>, for all covered contractor information systems relevant to its offer that are not part of an information technology service or system operated on behalf of the Government.

(2) If a subcontractor does not have summary level scores of a current NIST SP 800-171 DoD Assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) posted in SPRS, the subcontractor may conduct and submit a Basic Assessment, in accordance with the NIST SP 800-171 DoD Assessment Methodology, to <mailto:webpptsmh@navy.mil> for posting to SPRS along with the information required by paragraph (d) of this clause.

(End of clause)



**252.209-7009 I-95 ORGANIZATIONAL CONFLICT OF INTEREST -- MAJOR DEFENSE ACQUISITION PROGRAM MAY 2019**

(a) *Definition.* As used in this clause—

“Major subcontractor” means a subcontractor that is awarded a subcontract that equals or exceeds—

(1) Both the certified cost or pricing data threshold and 10 percent of the value of the contract under which the subcontracts is awarded; or

(2) The threshold specified in the definition of “major subcontractor” at Defense Federal Acquisition Regulation Supplement [209.571-1](#) on the date of subcontract award.

(b) This contract is for the performance of systems engineering and technical assistance for a major defense acquisition program or a pre-major defense acquisition program.

(c) *Prohibition.* Except as provided in paragraph (d) of this clause, as required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111-23), the Contractor or any affiliate of the Contractor is prohibited from participating as a prime contractor or major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre- major defense acquisition program.

(d) *Organizational Conflict of Interest Mitigation Plan.* If the Contractor submitted an acceptable Organizational Conflict of Interest Mitigation Plan that has been incorporated into this contract, then the prohibition in paragraph (c) of this clause does not apply. The Contractor shall comply with the Organizational Conflict of Interest Mitigation Plan. Compliance with the Organizational Conflict of Interest Mitigation Plan is a material requirement of the contract. Failure to comply may result in the Contractor or any affiliate of the Contractor being prohibited from participating as a contractor or major subcontractor in the development or production of a weapon system under the program, in addition to any other remedies available to the Government for noncompliance with a material requirement of a contract.

(End of clause)

**252.215-7014 I-97 EXCEPTION FROM CERTIFIED COST OR PRICING DATA REQUIREMENTS FOR FOREIGN MILITARY SALES INDIRECT OFFSETS JUN 2018**

(a) *Definition.* As used in this clause—

“Offset” means a benefit or obligation agreed to by a contractor and a foreign government or international organization as an inducement or condition to purchase supplies or services pursuant to a foreign military sale (FMS). There are two types of offsets: direct offsets and indirect offsets.

(1) A direct offset involves benefits or obligations, including supplies or services that are directly related to the item being purchased and are integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may require or agree to permit the customer to produce in its country certain components or subsystems of the item being sold. Generally, direct offsets must be performed within a specified period, because they are integral to the deliverable of the FMS contract.

(2) An indirect offset involves benefits or obligations, including supplies or services that are not directly related to the specific item(s) being purchased and are not integral to the deliverable of the FMS contract. For example, as a condition of a foreign military sale, the contractor may agree to purchase certain manufactured products, agricultural commodities, raw materials, or services, or make an equity investment or grant of equipment required by the FMS customer, or may agree to build a school, road or other facility. Indirect offsets would also include projects that are related to the FMS contract but not purchased under said contract (e.g., a project to develop or advance a capability, technology transfer, or know-how in a foreign company). Indirect offsets may be accomplished without a clearly defined period of performance.

(b) *Exceptions from certified cost or pricing data requirements.* Notwithstanding the requirements of Federal Acquisition Regulation (FAR) 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in the case of this contract or a subcontract, and FAR 52.215-21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data— Modifications, in the case of modification of this contract or a subcontract, submission of certified cost or pricing data shall not be required to the extent such data relates to an indirect offset (10 U.S.C. 3703(a)(4)).

(End of clause)

**252.223-7002 I-102 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES NOV 2023**

(a) *Definition.* “Ammunition and explosives,” as used in this clause—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk,

(ii) Ammunition;

(iii) Rockets;



- (iv) Missiles;
- (v) Warheads;
- (vi) Devices; and
- (vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

- (i) Inert components containing no explosives, propellants, or pyrotechnics;
- (ii) Flammable liquids;
- (iii) Acids;
- (iv) Oxidizers;
- (v) Powdered metals; or
- (vi) Other materials having fire or explosive characteristics.

(b) *Safety requirements.*

(1) The Contractor shall comply with the requirements of DoD Manual 4145.26, DoD Contractors' Safety Manual for Ammunition and Explosives, hereafter referred to as "the manual," in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) *Noncompliance with the manual.*

(1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Contractor shall—

- (1) Notify the Contracting Officer immediately;
- (2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and
- (3) Submit a written report to the Contracting Officer.

(e) *Contractor responsibility for safety.*

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—

- (i) The Contractor's personnel and property;
- (ii) The Government's personnel and property; or
- (iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) *Contractor responsibility for contract performance.*

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) *Subcontractors.*



- (1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.
- (i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.
- (ii) NOTE: The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to “the Government”. The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.
- (2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.
- (3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.
- (4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled “Change in Place of Performance—Ammunition and Explosives”.

(End of clause)

#### **252.225-7007 I-106 PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES DEC 2018**

(a) *Definitions.* As used in this clause—

“600 series of the Commerce Control List” means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement No. 1. that have a “6” as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of “600 series” in 15 CFR 772.)

“Communist Chinese military company” means any entity, regardless of geographic location that is—

- (1) A part of the commercial or defense industrial base of the People’s Republic of China including a subsidiary or affiliate of such entity; or
- (2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People’s Republic of China.

“Item” means—

- (1) A USML defense article, as defined at 22 CFR 120.6;
- (2) A USML defense service, as defined at 22 CFR 120.9; or
- (3) A 600 series item, as defined at 15 CFR 772.1.

“United States Munitions List” means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

(b) Any items covered by the United States Munitions List or the 600 series of the Commerce Control List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List or the 600 series of the Commerce Control List.

(End of clause)

#### **252.225-7056 I-110 PROHIBITION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME JAN 2023**

(a) *Definitions.* As used in this clause—

*Agency or instrumentality of the government of Venezuela* means an agency or instrumentality of a foreign state as defined in 28 U.S.C. 1603(b), with each reference in section 1603(b) to a foreign state deemed to be a reference to Venezuela.

*Business operations* means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

*Government of Venezuela* means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.



Person means—

- (1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;
  - (2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and
  - (3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or (2) of this definition.
- (b) Prohibition. In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.
- (c) The Contractor shall—
- (1) Not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government; or
  - (2) Have a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial products.

(End of clause)

#### **252.225-7057 I-111 Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China AUG 2022**

- (a) Definitions. As used in this provision—
- “Covered contract” and “covered entity” have the meaning given in the clause 252.225-7058, Postaward Disclosure of Employment of Individuals Who Work in the People’s Republic of China.
- (b) Prohibition on award. In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), DoD may not award a contract to the Offeror if it is a covered entity and proposes to employ one or more individuals who will perform work in the People’s Republic of China on a covered contract, unless the Offeror has disclosed its use of workforce and facilities in the People’s Republic of China.
- (c) Preaward disclosure requirement. At the time of submission of an offer for a covered contract, an Offeror that is a covered entity shall provide disclosures to include—
- (1) The proposed use of workforce on a covered contract or subcontract, if the Offeror employs one or more individuals who perform work in the People’s Republic of China;
  - (2) The total number of such individuals who will perform work in the People’s Republic of China; and
  - (3) A description of the physical presence, including street address or addresses, in the People’s Republic of China, where work on the covered contract will be performed.

(End of provision)

#### **252.227-7015 I-116 TECHNICAL DATA--COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES MAR 2023**

- (a) Definitions. As used in this clause—
- (1) Commercial product and commercial service includes commercial components and commercial processes but does not include commercial computer software.
  - (2) “Covered Government support contractor” means a contractor (other than a litigation support contractor covered by [252.204-7014](#)) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—
    - (i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
    - (ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
  - (3) “Form, fit, and function data” means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process



to the extent necessary to permit identification of physically and functionally interchangeable items.

(4) “Technical data” means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

(b) *License.*

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data);

or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial products; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial products furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(c) *Additional license rights.* The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability.* The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(e) *Applicability to subcontractors or suppliers.*

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775 and 10 U.S.C. 3781-3786.

(2) Whenever any technical data related to commercial products or commercial services developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense, and the clause at [252.227-7013](#) will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense.

(End of clause)

### **252.227-7016 I-117 RIGHTS IN BID OR PROPOSAL INFORMATION JAN 2023**

(a) *Definitions.*

(1) For contracts that require the delivery of technical data, the terms “technical data” and “computer software” are defined in the Rights in Technical Data—Other Than Commercial Products and Commercial Services clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.

(b) Government rights prior to contract award. By submission of its offer, the Offeror agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) *Government rights subsequent to contract award.* The Contractor agrees—

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—Other Than Commercial Products and Commercial Services, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, or Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause(s) of this contract.

(d) *Government-furnished information.* The Government's rights with respect to technical data or computer software contained in the Contractor's bid or proposal that were provided to the Contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) *Information available without restrictions.* The Government's rights to use, modify, reproduce, release, perform, display, or disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) *Flowdown.* The Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

### **252.227-7019 I-118 VALIDATION OF ASSERTED RESTRICTIONS- COMPUTER SOFTWARE JAN 2023**

(a) *Definitions.*

(1) As used in this clause, unless otherwise specifically indicated, the term “Contractor” means the Contractor and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation clause of this contract.

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) *Direct contact with subcontractors or suppliers.* The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government's

right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

*(d) Requests for information.*

(1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the—

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor's expense; or

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that Contractor's expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

*(e) Government right to challenge and validate asserted restrictions.*

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

*(f) Challenge procedures.*

(1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (f)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing any available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall



notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the Contractor a reasonable opportunity for responding to each challenge.

(g) *Contractor appeal—Government obligation.*

(1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer's final decision if, within the first ninety (90) days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has:

(A) appealed to the Board of Contract Appeals or filed suit in an appropriate court within ninety (90) days; or

(B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at [227.7103-7](#) of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(h) *Final disposition of appeal or suit.* If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the Contractor's expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor in defending the restriction.

(i) *Flowdown.* The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

## 252.227-7037 I-122 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA JAN 2023

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—Other Than Commercial Products and Commercial Services clause of this contract.

(b) *Commercial products or commercial services—presumption regarding development exclusively at private expense.* The Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial product or commercial service are justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not issue a challenge unless there are reasonable grounds to question the validity of the assertion that the commercial product or commercial service was developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (b)(1) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.*

(1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer will follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) *Challenge.*

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer will send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will —

(i) State the specific grounds for challenging the asserted restriction including, for commercial products or commercial services, sufficient information to reasonably demonstrate that the commercial product or commercial service was not developed exclusively at private expense;

(ii) Require a response within 60 days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer will extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, will formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule will afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial products or commercial services, the Contracting Officer will provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense. This final decision will be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds.*

(1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer will issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision will be issued within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial products or commercial services, the Contracting Officer will provide information demonstrating that the commercial product or service was not developed exclusively at private expense. Notwithstanding paragraph (e) of the Disputes clause, the final decision will be issued within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the 90-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within 90 days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) *Final disposition of appeal or suit.*

(1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the



marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government will continue to be bound by the restrictive marking; and

(ii) The Government will be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three 3 years of final payment on a contract or within three 3 years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes “validation” as addressed in 10 U.S.C. 3785(c).

(j) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute “validation.”

(k) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial products or commercial services, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

(End of clause)

## **252.244-7000 I-131 SUBCONTRACTS FOR COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES NOV 2023**

(a) The Contractor shall not include the terms of any Federal Acquisition Regulation (FAR) clause or Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial products or commercial services at any tier under this contract, unless

(1) For DFARS clauses, it is so specified in the particular clause; or

(2) For FAR clauses, the clause is listed at FAR 12.301(d) or it is so specified in paragraph (e)(1) of the clause at FAR 52.212-5 or paragraph (b)(1) of the clause at FAR 52.244-6, as applicable. (Section 847(b)(1)(B), Pub. L. 114-328)

(b)(1) In accordance with 10 U.S.C. 3457(c), the Contractor shall treat as commercial products any items valued at less than \$10,000 per item that were purchased by the Contractor for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract when purchased. (2) The Contractor shall ensure that any items to be used in performance of this contract, that are treated as commercial products pursuant to paragraph (b)(1) of this clause, meet all terms and conditions of this contract that are applicable to commercial products or commercial services in accordance with the clause at FAR [52.244-6](#) and paragraph (a) of this clause.

(c) Subcontracts. The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this contract, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

## **252.246-7003 I-134 NOTIFICATION OF POTENTIAL SAFETY ISSUES JAN 2023**

(a) *Definitions.* As used in this clause—

“Credible information” means information that, considering its source and the surrounding circumstances, supports a reasonable belief that an event has occurred or will occur.

“Critical safety item” means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could have a safety impact.

“Safety impact” means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding \$1,000,000.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.



- (b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—
- (1) All nonconformances for parts identified as critical safety items acquired by the Government under this contract; and
  - (2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.
- (c) The Contractor—
- (1) Shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) as soon as practicable, but not later than 72 hours, after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause; and
  - (2) Shall provide a written notification to the ACO and the PCO within 5 working days that includes—
    - (i) A summary of the defect or nonconformance;
    - (ii) A chronology of pertinent events;
    - (iii) The identification of potentially affected items to the extent known at the time of notification;
    - (iv) A point of contact to coordinate problem analysis and resolution; and
    - (v) Any other relevant information.
- (d) The Contractor—
- (1) Is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor; and
  - (2) Shall facilitate direct communication between the Government and the subcontractor as necessary.
- (e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.
- (f) *Subcontracts.*
- (1) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for—
    - (i) Parts identified as critical safety items;
    - (ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or
    - (iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.
  - (2) For those subcontracts, including subcontracts for commercial products or commercial services, described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—
    - (i) The Contractor or higher-tier subcontractor; and
    - (ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract.
- (End of clause)

#### **252.246-7004 I-135 SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS OCT 2010**

- (a) *Definition.* “Discipline Working Group,” as used in this clause, means representatives from the DoD Components, as defined in MIL-STD- 3007F, who are responsible for the unification and maintenance of the Unified Facilities Criteria (UFC) documents for a particular discipline area.
- (b) The Contractor shall ensure, consistent with the requirements of the applicable inspection clause in this contract, that the facilities, infrastructure, and equipment acquired, constructed, installed, repaired, maintained, or operated under this contract comply with Unified Facilities Criteria (UFC) 1-200-01 for—
- (1) Fire protection;
  - (2) Structural integrity;
  - (3) Electrical systems;
  - (4) Plumbing;
  - (5) Water treatment;
  - (6) Waste disposal; and
  - (7) Telecommunications networks.
- (c) The Contractor may apply a standard equivalent to or more stringent than UFC 1-200-01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.
- (End of clause)

#### **252.247-7023 I-136 TRANSPORTATION OF SUPPLIES BY SEA--BASIC OCT 2024**

- (a) *Definitions.* As used in this clause—  
"Foreign-flag vessel" means any vessel that is not a U.S.-flag vessel.



"Ocean transportation" means any water-borne transportation aboard a ship, vessel, boat, barge, ferry, or the like outside the internal waters of the United States as defined in [33 CFR 2.24](#).

"Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

"Supplies" means supplies that are clearly identifiable for eventual use by or owned by DoD at the time of transportation by sea, or are otherwise transported by DoD, regardless of ownership or use by DoD. An item is clearly identifiable for eventual use by DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

"U.S.-flag vessel" means either a vessel belonging to the United States or a vessel of the United States as that term is defined in [46 U.S.C. 116](#).

(b) If the transportation of supplies by sea is anticipated under this contract, the Contractor shall—

(1) Notify the Contracting Officer and Maritime Administration (MARAD) at [Cargo.Marad@dot.gov](mailto:Cargo.Marad@dot.gov) —

(i) Within 3 business days after contract award; or

(ii) Immediately prior to the shipment departure date necessary to meet delivery schedules, whichever is earlier; and

(2) Include in the notification—

(i) A statement of the Contractor's intent to transport supplies by sea;

(ii) The contract number; and

(iii) The task-order or delivery-order number, when applicable.

(c)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Other than commercial products; or

(B) Commercial products that—

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(d) The Contractor and its subcontractors may request, via the Contracting Officer, a waiver of the requirement to use a U.S.-flag vessel, or identification of any available U.S.-flag vessels, if the Contractor or a subcontractor sufficiently explains that—

(1) U.S.-flag vessels are not available at a fair and reasonable rate for commercial vessels of the United States; or

(2) U.S.-flag vessels are otherwise not available.

(e) The Contractor must submit any request for use of foreign-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, however, if a DoD waiver is not approved prior to the shipper's sailing date, this will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date(s) and required delivery date(s);

(3) Special handling and discharge requirements;

(4) Loading and discharge points.

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of current, diligent efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of quotes will suffice for this purpose. Copies of telephone notes, emails, and other relevant communications will otherwise be considered for this purpose.

(f) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and MARAD at [Cargo.Marad@dot.gov](mailto:Cargo.Marad@dot.gov), Attention: Military Team, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;



- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of the carrier.

(g) If this contract exceeds the simplified acquisition threshold, the Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had received a prior-approved waiver for U.S.-flag vessels for all foreign-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of DoD. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

(h) If this contract exceeds the simplified acquisition threshold and the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of foreign-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(i) If the Contractor did not anticipate transporting any supplies by sea at the time of contract award and, therefore, did not provide the notification required by paragraph (b) of this clause, but prior to shipment of supplies, the Contractor learns that supplies will be transported by sea, the Contractor shall—

- (1) Provide the notification required by paragraph (b) of this clause to the Contracting Officer and MARAD as soon as it is known that supplies will be transported by sea; and
- (2) Comply with all the terms and conditions of this clause.

(j) *Subcontracts.* In the award of subcontracts, for the types of supplies described in paragraph (c)(2) of this clause, including subcontracts for commercial products, the Contractor shall flow down the requirements of this clause as follows:

- (1) The Contractor shall insert the substance of this clause, including this paragraph (j), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.
- (2) The Contractor shall insert the substance of paragraphs (a) through (f) of this clause, and this paragraph (j), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

#### 52.216-7 I-137 ALLOWABLE COST AND PAYMENT AUG 2018

(a) Invoicing. (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract. (2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25. (3) The designated payment office will make interim payments for contract financing on the -1- day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. (b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the



term costs includes only -- (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract; (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for -- (A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made (1) In accordance with the terms and conditions of a subcontract or invoice; and (2) Ordinarily within 30 days of the submission of the Contractors payment request to the Government; (B) Materials issued from the Contractors inventory and placed in the production process for use on the contract; (C) Direct labor; (D) Direct travel; (E) Other direct in-house costs; and (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and (iii) The amount of financing payments that have been paid by cash, check or other form of payment to subcontractors. (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless-- (i) The Contractors practice is to make contributions to the retirement fund quarterly or more frequently; and (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractors indirect costs for payment purposes). (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause. (4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractors expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause. (c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks. (d) Final indirect cost rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal. (2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data. (ii) The proposed rates shall be based on the Contractors actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractors proposal. (iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official: (A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate. (B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts). (C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool. (D) Occupancy expenses (intermediate indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools. (E) Claimed allocation bases, by element of cost, used to distribute indirect costs. (F) Facilities capital cost of money factors computation. (G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element. (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts. (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract. (J) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information). (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates. (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution. (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes. (N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs). (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close). (iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process: (A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data. (B) General Organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at:

<https://www.whitehouse.gov/wpcontent/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf>

and

<https://www.whitehouse.gov/wpcontent/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>

(C) Identification of prime contracts under which the contractor performs as a subcontractor. (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission). (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission). (F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.). (G) Management letter from outside CPAs concerning any internal control weaknesses. (H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section. (I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government. (J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made. (K) Federal and State income tax returns. (L) Securities and Exchange Commission 10-K annual report. (M) Minutes from board of directors meetings. (N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year. (O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations. (v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates. (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution. (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause. (5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request. (6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may-- (A) Determine the amounts due to the Contractor under the contract; and (B) Record this determination in a unilateral modification to the contract. (ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause. (e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates -- (1) Shall be the anticipated final rates; and (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment. (f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied. (g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be -- (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or (2) Adjusted for prior overpayments or underpayments. (h) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid. (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver -- (i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and (ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except -- (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known; (B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses



of this contract, excluding, however, any expenses arising from the Contractors indemnification of the Government against patent liability. (End of Clause)

**52.222-42 I-140 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES MAY 2014**

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It is not a Wage Determination

Employee Class	Monetary Wage -- Fringe Benefits

(End of Clause)

**52.244-2 I-142 SUBCONTRACTS JUN 2020**

(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 contractor 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) or 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, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of the contract; or (ii) For contracts awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, 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: -1- (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) or 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.i (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: -2- (End of clause)

### **252.223-7007 I-145 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES NOV 2023**

(a) Definition. Arms, ammunition, and explosives (AA&E), as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives. (b) The requirements of DoD Manual 5100.76 apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

NOMENCLATURE	NATIONAL STOCK NUMBER	SENSITIVITY/CATEGORY
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(c) The Contractor shall comply with the requirements of DoD Manual 5100.76, as specified in the statement of work. The edition of DoD Manual 5100.76 in effect on the date of issuance of the solicitation for this contract shall apply. (d) The Contractor shall allow representatives of the Defense Counterintelligence and Security Agency (DCSA), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract. (e) The Contractor shall notify the cognizant DCSA field office of any subcontract involving AA&E within 10 days after award of the subcontract. (f) Subcontracts. The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier-- (1) For the development, production, manufacture, or purchase of AA&E; or (2) When AA&E will be provided to the subcontractor as Government-furnished property. (g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract. (End of clause)

### **252.234-7002 I-146 EARNED VALUE MANAGEMENT SYSTEM (DEVIATION 2015-O0017) SEP 2015**

(a) Definitions. As used in this clause-- "Acceptable earned value management system" means an earned value management system that generally complies with system criteria in paragraph (b) of this clause. "Earned value management system" means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA-748. "Significant deficiency" means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes. (b) System criteria. In the performance of this contract, the Contractor shall use-- (1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and (2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract. (c) If this contract has a value of \$100 million or more, the Contractor shall use an EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractors EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractors EVMS plan. (d) If this contract has a value of less than \$100 million, the Government will not make a formal determination that the Contractors EVMS complies with the EVMS guidelines in ANSI/EIA-748 with respect to the contract. The use of the Contractors EVMS for this contract does not imply a Government determination of the Contractors compliance with the EVMS guidelines in ANSI/EIA-748 for application to future contracts. The Government will allow the use of a Contractors EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA-748. (e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of \$100 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractors notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation. (f) The Government will schedule integrated



baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after-- (1) Contract award; (2) The exercise of significant contract options; and (3) The incorporation of major modifications. During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks. (g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause. (h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days). (i) Significant deficiencies. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency. (2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing. (3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning-- (i) Remaining significant deficiencies; (ii) The adequacy of any proposed or completed corrective action; (iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA-748; and (iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA-748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA-748 standards, the Contracting Officer will use discretion to disapprove the system based on input received from functional specialists and the auditor. (4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies. (j) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause. (k) With the exception of paragraphs (i) and (j) of this clause, the Contractor shall require its subcontractors to comply with EVMS requirements as follows: (1) For subcontracts valued at \$100 million or more, the following subcontractors shall comply with the requirements of this clause: -1- (2) For subcontracts valued at less than \$100 million, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause: -2- (End of clause)

#### **52.203-13 I-148 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT NOV 2021**

(a) Definitions. As used in this clause-- "Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization. "Full cooperation"-- (1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors and investigators' request for documents and access to employees with information; (2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-- (i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or (ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and (3) Does not restrict a Contractor from-- (i) Conducting an internal investigation; or (ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation. "Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions). "Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. "Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor. "United States," means the 50 States, the District of Columbia, and outlying areas. (b) Code of business ethics and conduct. (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall-- (i) Have a written code of business ethics and conduct; and (ii) Make a copy of the code available to each employee engaged in performance of the contract. (2) The Contractor shall--

(i) Exercise due diligence to prevent and detect criminal conduct; and (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law. (3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-- (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733). (ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractors disclosure as confidential where the information has been marked confidential or proprietary by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organizations jurisdiction. (iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract. (c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial product or commercial service as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period: (1) An ongoing business ethics awareness and compliance program. (i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractors standards and procedures and other aspects of the Contractors business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individuals respective roles and responsibilities. (ii) The training conducted under this program shall be provided to the Contractors principals and employees, and as appropriate, the Contractors agents and subcontractors. (2) An internal control system. (i) The Contractors internal control system shall-- (A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and (B) Ensure corrective measures are promptly instituted and carried out. (ii) At a minimum, the Contractors internal control system shall provide for the following: (A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system. (B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractors code of business ethics and conduct. (C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractors code of business ethics and conduct and the special requirements of Government contracting, including-- (1) Monitoring and auditing to detect criminal conduct; (2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and (3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process. (D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports. (E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct. (F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733). (1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation. (2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple- award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies contracting officers. (3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract. (4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause. (G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions. (d) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award and a performance period of more than 120 days. (2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the



Contracting Officer. (End of clause)

#### **52.204-25 I-150 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT NOV 2021**

(a) Definitions. As used in this clause-- "Backhaul" means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet). "Covered foreign country" means The Peoples Republic of China. "Covered telecommunications equipment or services" means-- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. "Critical technology" means-- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled- (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or (ii) For reasons relating to regional stability or surreptitious listening; (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817). "Interconnection arrangements" means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources. "Reasonable inquiry" means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. (b) Prohibition. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115- 232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. (2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. (c) Exceptions. This clause does not prohibit contractors from providing-- (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles. (d) Reporting requirement. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract



performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>. (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services. (End of clause)

#### **52.204-27 I-151 Prohibition on a ByteDance Covered Application JUN 2023**

(a) Definitions. As used in this clause Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited. Information technology, as defined in 40 U.S.C. 11101(6) (1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use (i) Of that equipment; or (ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product; (2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but (3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract. (b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, No TikTok on Government Devices Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor's employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13. (c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services. (End of clause)

#### **52.215-11 I-152 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA--MODIFICATIONS OCT 2021**

(DEVIATION 2022-O0001) (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$2 million on the date of execution of the modification, except that this clause does not apply to any modification if an exception under Federal Acquisition Regulation (FAR) 15.403-1(b) applies. (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because-- (1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative



under paragraph (a) of this clause. (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which-- (1) The actual subcontract price; or (2) The actual cost to the Contractor, if there was no subcontract awarded, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data. (d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense: (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted. (ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer. (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract. (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data. (2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if-- (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and (B) The Contractor proves that the certified cost or pricing data were available before the as of date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date. (ii) An offset shall not be allowed if-- (A) The understated data were known by the Contractor to be understated before the as of date specified on its Certificate of Current Cost or Pricing Data; or (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the as of date specified on its Certificate of Current Cost or Pricing Data. (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid (1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent. (End of clause)

#### **52.215-12 I-153 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (DEVIATION 2022-O0001) OCT 2021**

(a) Before awarding any subcontract expected to exceed \$2 million, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$2 million, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with Federal Acquisition Regulation (FAR) 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractors estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies. If the \$2 million threshold for submission of certified cost or pricing data is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. (b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification. (c) In each subcontract that, when entered into, exceeds \$2 million, the Contractor shall insert either-- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or (2) The substance of the clause at 52.215-13, Subcontractor Certified Cost or Pricing Data Modifications (DEVIATION 2022-O0001). (End of clause)

#### **52.215-13 I-154 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA--MODIFICATIONS OCT 2021**

(DEVIATION 2022-O0001) (a) The requirements of paragraphs (b) and (c) of this clause shall-- (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$2 million on the date of execution of the modification; and (2) Be limited to such modifications. (b) Before awarding any subcontract expected to exceed \$2 million, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$2 million, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with Federal Acquisition Regulation (FAR) 15.408, Table 15-2 (to include any information reasonably required to explain the



subcontractors estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies. If the \$2 million threshold for submission of certified cost or pricing data is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification. (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$2 million on the date of agreement on price or the date of award, whichever is later. (End of clause)

#### **52.215-19 I-155 NOTIFICATION OF OWNERSHIP CHANGES OCT 1997**

(a) The Contractor shall make the following notifications in writing: (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days. (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership. (b) The Contractor shall -- (1) Maintain current, accurate, and complete inventory records of assets and their costs; (2) Provide the ACO or designated representative ready access to the records upon request; (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change. (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k). (End of Clause)

#### **52.222-35 I-158 EQUAL OPPORTUNITY FOR VETERANS JUN 2020**

(a) Definitions. As used in this clause-- "Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301. (b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans. (c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings. (End of clause)

#### **52.222-36 I-159 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES JUN 2020**

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities. (b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings. (End of clause)

#### **52.230-2 I-160 COST ACCOUNTING STANDARDS JUN 2020**

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall-- (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the



basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government. (2) Follow consistently the Contractors cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate. (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractors signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract. (4)(i) (Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractors established cost accounting practices. (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States. (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract. (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government. (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes. (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause. (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractors award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractors signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation (FAR) shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of the lower CAS threshold specified in FAR 30.201-4(b) on the date of subcontract award, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1. (End of clause)

#### **252.225-7972 I-163 PROHIBITION ON THE PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS MAY 2020**

(DEVIATION 2020-O0015) (a) Prohibition. In accordance with section 848 of the National Defense Authorization Act for Fiscal Year 2020, the Contractor shall not provide or use in the performance of this contract-- (1) An unmanned aircraft system (UAS), or any related services or equipment, that-- (i) Is manufactured in the Peoples Republic of China or by an entity domiciled in the Peoples Republic of China; (ii) Uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in the Peoples Republic of China or by an entity domiciled in the Peoples Republic of China; (iii) Uses a ground control system or operating software developed in the Peoples Republic of China or by an entity domiciled in the Peoples Republic of China; or (iv) Uses network connectivity or data storage located in, or administered by an entity domiciled in, the Peoples Republic of China; or (2) A system for the detection or identification of a UAS, or any related services or equipment, that is manufactured-- (i) In the Peoples Republic of China; or (ii) By an entity domiciled in the Peoples Republic of China. (b) Subcontracts. The Contractor shall insert the substance of this



clause, including this paragraph (b), in all subcontracts or other contractual instruments, including subcontracts for the acquisition of commercial items. (End of clause)

**252.239-7018 I-164 SUPPLY CHAIN RISK (DEVIATION 2018-O0020) SEP 2018**

(a) Definitions. As used in this clause-- "Information technology" (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency. (1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires (i) Its use; or (ii) To a significant extent, its use in the performance of a service or the furnishing of a product. (2) The term "information technology" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources. (3) The term "information technology" does not include any equipment acquired by a contractor incidental to a contract. "Supply chain risk," means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 10 U.S.C. 2339a). (b) The Contractor shall mitigate supply chain risk in the provision of supplies and services to the Government. (c) In order to manage supply chain risk, the Government may use the authorities provided by 10 U.S.C. 2339a. In exercising these authorities, the Government may consider information, public and non-public, including all-source intelligence, relating to a Contractors supply chain. (d) If the Government exercises the authority provided in 10 U.S.C. 2339a to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court. (End of clause)