Federal Acquisition Regulation

of the Contracting Officer or a communica-
tion from a SAR of the Contracting Officer,
in either of which events the Contractor
shall continue performance; provided, how-
ever, that if the Contractor regards the di-
rection or communication as a change as de-
scribed in (b) above, notice shall be given in
the manner provided. All directions, commu-
nications, interpretations, orders and similar
actions of the SAR shall be reduced to writ-
ting promptly and copies furnished to the
Contractor and to the Contracting Officer.
The Contracting Officer shall promptly
countermand any action which exceeds
the authority of the SAR.

(d) Government response. The Contracting
Officer shall promptly, within (to be negoti-
tated) calendar days after receipt of notice,
respond to the notice in writing. In respond-
ing, the Contracting Officer shall either—
(1) Confirm that the conduct of which the
Contractor gave notice constitutes a change
and when necessary direct the mode of fur-
ther performance;
(2) Countermand any communication re-
garded as a change;
(3) Deny that the conduct of which the
Contractor gave notice constitutes a change
and when necessary direct the mode of fur-
ther performance; or
(4) In the event the Contractor’s notice in-
formation is inadequate to make a decision
under (1), (2), or (3) above, advise the Con-
tractor what additional information is re-
quired, and establish the date by which it
should be furnished and the date thereafter
by which the Government will respond.

(e) Equitable adjustments. (1) If the Con-
tracting Officer confirms that Government
conduct effected a change as alleged by the
Contractor, and the conduct causes an in-
crease or decrease in the Contractor’s cost
of, or the time required for, performance of
any part of the work under this contract,
whether changed or not changed by such
conduct, an equitable adjustment shall be
made—
(i) In the contract price or delivery sched-
ule or both; and
(ii) In such other provisions of the contract
as may be affected.
(2) The contract shall be modified in writ-
ing accordingly. In the case of drawings, de-
signs or specifications which are defective
and for which the Government is responsible,
the equitable adjustment shall include the
cost and time extension for delay reasonably
incurred by the Contractor in attempting to
comply with the defective drawings, designs
or specifications before the Contractor iden-
tified, or reasonably should have identified,
such defect. When the cost of property made
obsolete or excess as a result of a change
confirmed by the Contracting Officer under
this clause is included in the equitable ad-
justment, the Contracting Officer shall have
the right to prescribe the manner of disposit-
tion of the property. The equitable adjust-
ment shall not include increased costs or
time extensions for delay resulting from the
Contractor’s failure to provide notice or to
continue performance as provided, respec-
tively, in (b) and (c) above.

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

(End of clause)

(48 FR 24478, Sept. 19, 1983, as amended at 55
FR 25534, June 21, 1990; 55 FR 38518, Sept. 18,
1990; 71 FR 57369, Sept. 28, 2006)

52.244–1 [Reserved]

52.244–2 Subcontracts.

As prescribed in 44.204(a)(1), insert
the following clause:

**SUBCONTRACTS (OCT 2010)**

(a) Definitions. As used in this clause—
Approved purchasing system means a Con-
tractor’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 Con-
tracting Officer’s written consent for the
Contractor to enter into a particular sub-
contract.

Subcontract means any contract, as defined
in FAR Subpart 2.1, entered into by a sub-
contractor to furnish supplies or services for
performance of the prime contract or a sub-
contract. It includes, but is not limited to,
purchase orders, and changes and modifica-
tions 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 un-
priced delivery orders), and only if required
in accordance with paragraph (c) or (d) of
this clause.

(c) If the Contractor does not have an ap-
proved purchasing system, consent to sub-
contract 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 Depart-
ment of Defense, the Coast Guard, or the Na-
tional Aeronautics and Space Administra-
tion, the greater of the simplified acquisi-
tion threshold or 5 percent of the total esti-
mated cost of the contract; or
(ii) For a contract awarded by a civilian
agency other than the Coast Guard and the
National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor’s current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor’s certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor’s certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404–4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

Alternate I (JUNE 2007). As prescribed in 44.204(a)(2), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the
total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.


52.244–3 [Reserved]

52.244–4 Subcontractors and outside associates and consultants (Architect-engineer services).

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer’s written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)


52.244–5 Competition in Subcontracting.

As prescribed in 44.204(c), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101–510, section 831 as amended), the Contractor may award subcontractors under this contract on a non-competitive basis to its protégés.

(End of clause)


52.244–6 Subcontracts for Commercial Items.

As prescribed in 44.403(a), insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2010)

(a) Definitions. As used in this clause—

Commercial item has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

Subcontract includes a transfer of commercial items 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 items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203–13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110–252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds $5,000,000 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.


(iii) 52.219–8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222–26, Equal Opportunity (MAR 2007) (E.O. 11246).

(v) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212(a));


(vii) [Reserved]

(viii) 52.222–50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g));