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SUBCHAPTER H—CLAUSES AND FORMS

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36479, July 31, 1991, unless otherwise noted.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using part 252.

(b) *Numbering.* (2) *Provisions or clauses that supplement the FAR.*

(ii)(B) DFARS provisions or clauses use a four digit sequential number in the 7000 series, e.g., –7000, –7001, –7002. Department or agency supplemental provisions or clauses use four digit sequential numbers in the 9000 series.

Subpart 252.2—Text of Provisions And Clauses

252.201–7000 Contracting officer's representative.

As prescribed in 201.602–70, use the following clause:

CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) *Definition. Contracting officer's representative* means an individual designated in accordance with subsection 201.602–2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.203–7000 Requirements Relating to Compensation of Former DoD Officials.

As prescribed in 203.171–4(a), use the following clause:

REQUIREMENTS RELATING TO COMPENSATION OF FORMER DoD OFFICIALS (SEP 2011)

(a) *Definition. Covered DoD official,* as used in this clause, means an individual that—

(1) Leaves or left DoD service on or after January 28, 2008; and

(2)(i) Participated personally and substantially in an acquisition as defined in 41 U.S.C. 131 with a value in excess of $10 million, and serves or served—

(A) In an Executive Schedule position under subchapter II of chapter 53 of Title 5, United States Code;

(B) In a position in the Senior Executive Service under subchapter VIII of chapter 53 of Title 5, United States Code; or

(C) In a general or flag officer position compensated at a rate of pay for grade O–7 or above under section 201 of Title 37, United States Code; or

(ii) Serves or served in DoD in one of the following positions: Program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of $10 million.

(b) The Contractor shall not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor.

(c) Failure by the Contractor to comply with paragraph (b) of this clause may subject the Contractor to rescission of this contract, suspension, or debarment in accordance with 41 U.S.C. 2105(c).

(End of clause)

[74 FR 2409, Jan. 15, 2009, as amended at 76 FR 58137, Sept. 20, 2011; 78 FR 37990, June 25, 2013]

252.203–7001 Prohibition on persons convicted of fraud or other defense-contract-related felonies.

As prescribed in 203.570–3, use the following clause:

PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (DEC 2008)

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

(1) *Arising out of a contract with the DoD* means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) *Conviction of fraud or any other felony* means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) *Date of conviction* means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

(1) In a management or supervisory capacity on this contract;

(2) On the board of directors of the Contractor;

(3) As a consultant, agent, or representative for the Contractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (301) 937–1542; *www.ojp.usdoj.gov/BJA/grant/DPFC.html*.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 58 FR 28471, May 13, 1993; 59 FR 27675, May 27, 1994; 60 FR 61600, Nov. 30, 1995; 62 FR 34128, June 24, 1997; 64 FR 14398, Mar. 25, 1999; 69 FR 74990, Dec. 15, 2004; 73 FR 76972, Dec. 18, 2008]

252.203–7002 Requirement to Inform Employees of Whistleblower Rights.

As prescribed in 203.970, use the following clause:

REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

(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. 2409, 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)

[74 FR 2411, Jan. 15, 2009, as amended at 78 FR 59854, Sept. 30, 2013]

252.203–7003 Agency Office of the Inspector General.

As prescribed in 203.1004(a), use the following clause:

AGENCY OFFICE OF THE INSPECTOR GENERAL (DEC 2012)

The agency office of the Inspector General referenced in paragraphs (c) and (d) of FAR clause 52.203–13, Contractor Code of Business Ethics and Conduct, is the DoD Office of Inspector General at the following address:

Department of Defense Office of Inspector General, Investigative Policy and Oversight, Contractor Disclosure Program, 4800 Mark Center Drive, Suite 11H25, Alexandria, VA 22350–1500.

Toll Free Telephone: 866–429–8011.

(End of clause)

[77 FR 76937, Dec. 31, 2012]

252.203–7004 Display of fraud hotline poster(s).

As prescribed in 203.1004(b)(2)(ii), use the following clause:

Display of Fraud Hotline Poster(s) (DEC 2012)

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

(b) *Display of fraud hotline poster(s).*

(1) The Contractor shall display prominently in common work areas within business segments performing work in the United States under Department of Defense (DoD) contracts DoD hotline posters prepared by the DoD Office of the Inspector General. DoD hotline posters may be obtained via the Internet at *http://www.dodig.mil/HOTLINE/hotline_posters.htm.*

(2) If the contract is funded, in whole or in part, by Department of Homeland Security (DHS) disaster relief funds, the DHS fraud hotline poster shall be displayed in addition to the DoD fraud hotline poster. If a display of a DHS fraud hotline poster is required, the Contractor may obtain such poster from:

[Contracting Officer shall insert the appropriate DHS contact information or website.]

(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 poster(s) at the website.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that exceed $5 million except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

[76 FR 57674, Sept. 16, 2011, as amended at 77 FR 76937, Dec. 31, 2012]

252.203–7005 Representation Relating to Compensation of Former DoD Officials.

As prescribed in 203.171–4(b), insert the following provision:

REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (NOV 2011)

(a) *Definition. Covered DoD official* is defined in the clause at 252.203–7000, Requirements Relating to Compensation of Former DoD Officials.

(b) By submission of this offer, the offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in compliance with all post-employment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101–2107, and 5 CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104–2.

[76 FR 71830, Nov. 18, 2011]

252.204–7000 Disclosure of information.

As prescribed in 204.404–70(a), use the following clause:

DISCLOSURE OF INFORMATION (AUG 2013)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that has been scoped and negotiated by the contracting activity with the Contractor and research performer and determined in writing by the Contracting Officer to be fundamental research in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the USD (AT&L) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008, (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

[78 FR 48333, Aug. 8, 2013]

252.204–7001 Commercial and Government Entity (CAGE) code reporting.

As prescribed in 204.7207, use the following provision:

COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (AUG 1999)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter ''CAGE'' before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will—

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

[64 FR 43101, Aug. 9, 1999, as amended at 66 FR 47097, Sept. 11, 2001]

252.204–7002 Payment for subline items not separately priced.

As prescribed in 204.7104–1(b)(3)(iv), use the following clause:

PAYMENT FOR SUBLINE ITEMS NOT SEPARATELY PRICED (DEC 1991)

(a) If the schedule in this contract contains any contract subline items or exhibit subline items identified as not separately priced (NSP), it means that the unit price for that subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for any portion of a contract line item or exhibit line item which contains an NSP until—

(1) The Contractor has delivered the total quantity of all related contract subline items or exhibit subline items; and

(2) The Government has accepted them.

(c) This clause does not apply to technical data.

(End of clause)

252.204–7003 Control of government personnel work product.

As prescribed in 204.404–70(b), use the following clause:

CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

[57 FR 14996, Apr. 23, 1992]

252.204–7004 Alternate A, System for Award Management.

ALTERNATE A, SYSTEM FOR AWARD MANAGEMENT (MAY 2013)

As prescribed in 204.1105, substitute the following paragraph (a) for paragraph (a) of the provision at FAR 52.204–7:

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

''System for Award Management (SAM) database'' means the primary Government repository for contractor information required for the conduct of business with the Government.

''Commercial and Government Entity (CAGE) code'' means—

(1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an ''NCAGE code.''

''Data Universal Numbering System (DUNS) number'' means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

''Data Universal Numbering System +4 (DUNS+4) number'' means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern.

''Registered in the System for Award Management (SAM) database'' means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, and Contractor and Government Entity (CAGE) code into the SAM database;

(2) The contractor has completed the Core Data, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as part of the SAM registration process; and

(4) The Government has marked the record ''Active.''

[78 FR 28758, May 16, 2013, as amended at 78 FR 30232, May 22, 2013]

252.204–7005 Oral attestation of security responsibilities.

As prescribed in 204.404–70(c), use the following clause:

ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)

(a) Contractor employees cleared for access to Top Secret (TS), Special Access Program (SAP), or Sensitive Compartmented Information (SCI) shall attest orally that they will conform to the conditions and responsibilities imposed by law or regulation on those granted access. Reading aloud the first paragraph of Standard Form 312, Classified Information Nondisclosure Agreement, in the presence of a person designated by the Contractor for this purpose, and a witness, will satisfy this requirement. Contractor employees currently cleared for access to TS, SAP, or SCI may attest orally to their security responsibilities when being briefed into a new program or during their annual refresher briefing. There is no requirement to retain a separate record of the oral attestation.

(b) If an employee refuses to attest orally to security responsibilities, the Contractor shall deny the employee access to classified information and shall submit a report to the Contractor's security activity.

(End of clause)

[64 FR 45197, Aug. 19, 1999, as amended at 66 FR 55121, Nov. 1, 2001]

252.204–7006 Billing Instructions.

As prescribed in 204.7109, use the following clause:

BILLING INSTRUCTIONS (OCT 2005)

When submitting a request for payment, the Contractor shall—

(a) Identify the contract line item(s) on the payment request that reasonably reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item included in the payment request.

(End of clause)

[70 FR 58983, Oct. 11, 2005]

252.204–7007 Alternate A, Annual Representations and Certifications.

As prescribed in 204.1202, use the following provision:

ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (MAY 2013)

Substitute the following paragraphs (d) and (e) for paragraph (d) of the provision at FAR 52.204–8:

(d)(1) The following representations or certifications in the System for Award Management (SAM) database are applicable to this solicitation as indicated:

(i) 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country. Applies to all solicitations expected to result in contracts of $150,000 or more.

(ii) 252.209–7003, Reserve Officer Training Corps and Military Recruiting on Campus—Representation. Applies to all solicitations with institutions of higher education.

(iii) 252.216–7008, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government. Applies to solicitations for fixed-price supply and service contracts when the contract is to be performed wholly or in part in a foreign country, and a foreign government controls wage rates or material prices and may during contract performance impose a mandatory change in wages or prices of materials.

(iv) 252.225–7042, Authorization to Perform. Applies to all solicitations when performance will be wholly or in part in a foreign country.

(v) 252.229–7012, Tax Exemptions (Italy)—Representation. Applies to solicitations when contract performance will be in Italy.

(vi) 252.229–7013, Tax Exemptions (Spain)—Representation. Applies to solicitations when contract performance will be in Spain.

(vii) 252.247–7022, Representation of Extent of Transportation by Sea. Applies to all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold.

(2) The following representations or certifications in SAM are applicable to this solicitation as indicated by the Contracting Officer: [*Contracting Officer check as appropriate.*]

____ (i) 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.

____ (ii) 252.225–7000, Buy American—Balance of Payments Program Certificate.

____ (iii) 252.225–7020, Trade Agreements Certificate.

____ Use with Alternate I.

____ (iv) 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products.

____ (v) 252.225–7031, Secondary Arab Boycott of Israel.

_____ (vi) 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

_____ Use with Alternate I.

_____ Use with Alternate II.

_____ Use with Alternate III.

_____ Use with Alternate IV.

_____ Use with Alternate V.

(e) The offeror has completed the annual representations and certifications electronically via the SAM Web site at *https://www.acquisition.gov/*. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204–8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by provision number, title, date*]. Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications located in the SAM database.

FAR/DFARS provision No.	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(End of provision)

[76 FR 58141, Sept. 20, 2011, as amended at 76 FR 71464, Nov. 18, 2011; 77 FR 19130, Mar. 30, 2012; 77 FR 30357, May 22, 2012; 77 FR 35881, June 15, 2012; 77 FR 43470, July 24, 2012; 78 FR 28758, May 16, 2013; 78 FR 30232, May 22, 2013]

252.204–7008—252.204–7009 [Reserved]

252.204–7010 Requirement for Contractor To Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol.

As prescribed in 204.470–3, use the following clause:

REQUIREMENT FOR CONTRACTOR TO NOTIFY DOD IF THE CONTRACTOR'S ACTIVITIES ARE SUBJECT TO REPORTING UNDER THE U.S.-INTERNATIONAL ATOMIC ENERGY AGENCY ADDITIONAL PROTOCOL (JAN 2009)

(a) If the Contractor is required to report any of its activities in accordance with Department of Commerce regulations (15 CFR part 781 *et seq.*) or Nuclear Regulatory Commission regulations (10 CFR part 75) in order to implement the declarations required by the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP), the Contractor shall—

(1) Immediately provide written notification to the following DoD Program Manager: *[Contracting Officer to insert Program Manager's name, mailing address, e-mail address, telephone number, and facsimile number];*

(2) Include in the notification—

(i) Where DoD contract activities or information are located relative to the activities or information to be declared to the Department of Commerce or the Nuclear Regulatory Commission; and

(ii) If or when any current or former DoD contract activities and the activities to be declared to the Department of Commerce or the Nuclear Regulatory Commission have been or will be co-located or located near enough to one another to result in disclosure of the DoD activities during an IAEA inspection or visit; and

(3) Provide a copy of the notification to the Contracting Officer.

(b) After receipt of a notification submitted in accordance with paragraph (a) of this clause, the DoD Program Manager will—

(1) Conduct a security assessment to determine if and by what means access may be granted to the IAEA; or

(2) Provide written justification to the component or agency treaty office for a national security exclusion, in accordance with DoD Instruction 2060.03, Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America. DoD will notify the Contractor if a national security exclusion is applied at the Contractor's location to prohibit access by the IAEA.

(c) If the DoD Program Manager determines that a security assessment is required—

(1) DoD will, at a minimum—

(i) Notify the Contractor that DoD officials intend to conduct an assessment of vulnerabilities to IAEA inspections or visits;

(ii) Notify the Contractor of the time at which the assessment will be conducted, at least 30 days prior to the assessment;

(iii) Provide the Contractor with advance notice of the credentials of the DoD officials who will conduct the assessment; and

(iv) To the maximum extent practicable, conduct the assessment in a manner that does not impede or delay operations at the Contractor's facility; and

(2) The Contractor shall provide access to the site and shall cooperate with DoD officials in the assessment of vulnerabilities to IAEA inspections or visits.

(d) Following a security assessment of the Contractor's facility, DoD officials will notify the Contractor as to—

(1) Whether the Contractor's facility has any vulnerabilities where potentially declarable activities under the U.S.-IAEA AP are taking place;

(2) Whether additional security measures are needed; and

(3) Whether DoD will apply a national security exclusion.

(e) If DoD applies a national security exclusion, the Contractor shall not grant access to IAEA inspectors.

(f) If DoD does not apply a national security exclusion, the Contractor shall apply managed access to prevent disclosure of program activities, locations, or information in the U.S. declaration.

(g) The Contractor shall not delay submission of any reports required by the Department of Commerce or the Nuclear Regulatory Commission while awaiting a DoD response to a notification provided in accordance with this clause.

(h) The Contractor shall incorporate the substance of this clause, including this paragraph (h), in all subcontracts that are subject to the provisions of the U.S.-IAEA AP.

(End of clause)

[74 FR 2412, Jan. 15, 2009]

252.204–7011 Alternative Line Item Structure.

As prescribed in 204.7109(b), insert the following provision:

ALTERNATIVE LINE-ITEM STRUCTURE (SEP 2011)

(a) Line items are the basic structural elements in a solicitation or contract that provide for the organization of contract requirements to facilitate pricing, delivery, inspection, acceptance and payment. Line items are organized into contract line items, subline items, and exhibit line items. Separate line items should be established to account for separate pricing, identification (see section 211.274 of the Defense Federal Acquisition Regulation Supplement), deliveries, or funding. The Government recognizes that the line item structure in this solicitation may not conform to every offeror's practices. Failure to correct these issues can result in difficulties in accounting for deliveries and processing payments. Therefore, offerors are invited to propose an alternative line item structure for items on which bids, proposals, or quotes are requested in this solicitation to ensure that the resulting contract structure is economically and administratively advantageous to the Government and the Contractor.

(b) If an alternative line item structure is proposed, the structure must be consistent with subpart 204.71 of the Defense Federal Acquisition Regulation Supplement and PGI 204.71. A sample solicitation line-item structure and a corresponding offer of a proposed alternative line-item structure follow.

Solicitation:

Item No.	Supplies/Service	Quantity	Unit	Unit price	Amount
0001	Computer, Desktop with CPU, Monitor, Keyboard and Mouse.	20	EA	.....	

Alternative line-item structure offer where monitors are shipped separately:

Item No.	Supplies/Service	Quantity	Unit	Unit Price	Amount
0001	Computer, Desktop with CPU, Keyboard and Mouse.	20	EA	.	
0002	Monitor	20	EA	.....	

(End of provision)

[76 FR 58139, Sept. 20, 2011]

252.205–7000 Provision of information to cooperative agreement holders.

As prescribed in 205.470, use the following clause:

PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) *Definition. Cooperative agreement holder* means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 69 FR 63328, Nov. 1, 2004]

252.206–7000 Domestic source restriction.

As prescribed at 206.302–3–70, use the following provision:

DOMESTIC SOURCE RESTRICTION (DEC 1991)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 2304(c)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

252.208–7000 Intent to furnish precious metals as Government-furnished material.

As prescribed in 208.7305(a), use the following clause:

INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991)

(a) The Government intends to furnish precious metals required in the manufacture of items to be delivered under the contract if the Contracting Officer determines it to be in the Government's best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Government Furnished Property clause of the contract.

(b) The Offeror shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity in whole troy ounces of precious metals required in the performance of this contract (including precious metals required for any first article or production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

Precious metal*	Quantity	Deliverable item (NSN and nomenclature)!!rs

*If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each deliverable item which contains precious metals—one based on the Government furnishing precious metals, and one based on the Contractor furnishing precious metals. Award will be made on the basis which is in the best interest of the Government.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this contract, unless the Contractor knows that the item being purchased contains no precious metals.

(End of clause)

252.209–7000 [Reserved]

252.209–7001 Disclosure of ownership or control by the government of a terrorist country.

As prescribed in 209.104–70(a), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (JAN 2009)

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

(1) *Government of a terrorist country* includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) *Terrorist country* means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries subject to this provision include: Cuba, Iran, Sudan, and Syria.

(3) *Significant interest* means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's

securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in ''nominee shares,'' ''street names,'' or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) *Disclosure.* If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include—

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

[59 FR 51131, Oct. 7, 1994, as amended at 63 FR 14837, Mar. 27, 1998; 69 FR 55993, Sept. 17, 2004; 71 FR 62567, Oct. 26, 2006; 74 FR 2422, Jan. 15, 2009]

252.209–7002 Disclosure of ownership or control by a foreign government.

As prescribed in 209.104–70(b), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (JUN 2010)

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

(1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror's officers or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) *Entity controlled by a foreign government*—

(i) Means—

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) *Foreign government* includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) *Proscribed information* means—

(i) Top Secret information;

(ii) Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) *Prohibition on award.* No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) *Disclosure.* The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format: Offeror's Point of Contact for Questions about Disclosure (Name and Phone Number with Country Code, City Code and Area Code, as applicable)

Name and Address of Offeror.

Name and Address of Entity Controlled by a Foreign Government.	Description of Interest, Ownership Percentage, and Identification of Foreign Government

(End of provision)

[58 FR 28471, May 13, 1993, as amended at 59 FR 51133, Oct. 7, 1994; 70 FR 35546, June 21, 2005; 75 FR 35685, June 23, 2010]

252.209–7003 Reserve Officer Training Corps and Military Recruiting on Campus–Representation.

As prescribed in 209.470–4(a), use the following provision:

RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS—REPRESENTATION (MAR 2012)

(a) *Definition*. ''Institution of higher education,'' as used in this provision, is defined in the clause at 252.209–7005, Reserve officer Training Corps and Military Recruiting on Campus.

(b) *Limitation on contract award*. Except as provided in paragraph (c) of this provision, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a current policy or practice (regardless of when implemented) that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.

(ii) Address.

(iii) Telephone number.

(iv) Date and place of birth.

(v) Educational level.

(vi) Academic major.

(vii) Degrees received.

(viii) Most recent educational institution enrollment.

(c) *Exception*. The limitation in paragraph (b) of this provision does not apply to an institution of higher education if the Secretary of Defense determines that the institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) *Representation*. By submission of its offer, the offeror represents that the institution does not have any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has determined that the institution has a long-standing policy of pacifism based on historical religious affiliation.

(End of provision)

[77 FR 19130, Mar. 30, 2012]

252.209–7004 Subcontracting with firms that are owned or controlled by the government of a terrorist country.

As prescribed in 209.409, use the following clause:

SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTY (DEC 2006)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of $30,000 with a firm, or a subsidiary of a firm, that is identified in the Excluded Parties List System as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)

[63 FR 14837, Mar. 27, 1998, as amended at 71 FR 75893, Dec. 19, 2006]

252.209–7005 Reserve Officer Training Corps and military recruiting on campus.

As prescribed in 209.470–4, use the following clause:

RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS (MAR 2012)

(a) *Definition*. ''Institution of higher education,'' as used in this clause, means an institution that meets the requirements of 20

U.S.C. 1001 and includes all subelements of such an institution.

(b) *Limitation*. Except as provided in paragraph (c) of this clause, the Contractor shall not, during performance of this contract, have any policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Transportation from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.

(ii) Address.

(iii) Telephone number.

(iv) Date and place of birth.

(v) Educational level.

(vi) Academic major.

(vii) Degrees received.

(viii) Most recent educational institution enrollment.

(c) *Exception*. The limitation in paragraph (b) of this clause does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the prohibition in paragraph (b) of this clause—

(1) The Contractor will be ineligible for further payments under this and other contracts with the Department of Defense; and

(2) The Government will terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award.

(End of clause)

[65 FR 2057, Jan. 13, 2000, as amended at 77 FR 19130, Mar. 30, 2012]

252.209–7006 Limitations on Contractors Acting as Lead System Integrators.

As prescribed in 209.570–4(a), use the following provision:

LIMITATIONS ON CONTRACTORS ACTING AS LEAD SYSTEM INTEGRATORS (JAN 2008)

(a) *Definitions*. *Lead system integrator*, *lead system integrator with system responsibility*, and *lead system integrator without system responsibility*, as used in this provision, have the meanings given in the clause of this solicitation entitled ''Prohibited Financial Interests for Lead System Integrators'' (DFARS 252.209–7007).

(b) *General*. Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Defense may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations*. (1) The offeror represents that it does

[ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest as described in paragraph (b) of this provision with respect to the system(s), subsystem(s), system of systems, or services described in this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on the possibility of submitting a mitigation plan and/or requesting an exception.

(e) If the offeror does have a direct financial interest, the offeror may be prohibited from receiving an award under this solicitation, unless the offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control.

(f) This provision implements the requirements of 10 U.S.C. 2410p, as added by section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364).

(End of provision)

[73 FR 1825, Jan. 10, 2007]

252.209–7007 Prohibited Financial Interests for Lead System Integrators.

As prescribed in 209.570–4(b), use the following clause:

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2009)

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

(1) *Lead system integrator* includes *lead system integrator with system responsibility* and *lead system integrator without system responsibility*.

(2) *Lead system integrator with system responsibility* means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(3) *Lead system integrator without system responsibility* means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Defense under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If a direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer's satisfaction, the Contracting Officer may terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 10 U.S.C. 2410p, as added by Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), and Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(End of clause)

[73 FR 1825, Jan. 10, 2007, as amended at 74 FR 34269, July 15, 2009]

252.209–7008 Notice of Prohibition Relating to Organizational Conflict of Interest—Major Defense Acquisition Program.

As prescribed in 209.571–8(a), use the following provision:

NOTICE OF PROHIBITION RELATING TO ORGANIZATIONAL CONFLICT OF INTEREST—MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)

(a) *Definitions.* ''Major subcontractor'' is defined in the clause at 252.209–7009, Organizational Conflict of Interest—Major Defense Acquisition Program.

(b) This solicitation 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.* As required by paragraph (b)(3) of section 207 of the Weapons System Acquisition Reform Act of 2009 (Pub. L. 111–23), if awarded the contract, the contractor or any affiliate of the contractor is prohibited from participating as a prime contractor or a major subcontractor in the development or production of a weapon system under the major defense acquisition program or pre-major defense acquisition program, unless the offeror submits, and the Government approves, an Organizational Conflict of Interest Mitigation Plan.

(d) *Request for an exception.* If the offeror requests an exception to the prohibition of paragraph (c) of this provision, then the offeror shall submit an Organizational Conflict of Interest Mitigation Plan with its offer for evaluation.

(e) *Incorporation of Organizational Conflict of Interest Mitigation Plan in contract.* If the apparently successful offeror submitted an acceptable Organizational Conflict of Interest Mitigation Plan, and the head of the contracting activity determines that DoD needs the domain experience and expertise of the highly qualified, apparently successful offeror in accordance with FAR 209.571–7(c), then

the Contracting Officer will incorporate the Organizational Conflict of Interest Mitigation Plan into the resultant contract, and paragraph (d) of the clause at 252.209–7009 will become applicable.

(End of provision)

[75 FR 81914, Dec. 29, 2010]

252.209–7009 Organizational Conflict of Interest—Major Defense Acquisition Program.

As prescribed in 209.571–8(b), use the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST—MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2012)

(a) *Definition*. ''Major subcontractor,'' as used in this clause, means a subcontractor that is awarded a subcontract that equals or exceeds

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

(ii) $50 million.

(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)

[75 FR 81914, Dec. 29, 2010, as amended at 77 FR 76940, Dec. 31, 2012]

252.209–7010 Critical Safety Items.

As prescribed in 209.270–5, use the following clause:

CRITICAL SAFETY ITEMS (AUG 2011)

(a) *Definitions*.

Aviation critical safety item means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause—

(i) A catastrophic or critical failure resulting in the loss of, or serious damage to, the aircraft or weapon system;

(ii) An unacceptable risk of personal injury or loss of life; or

(iii) An uncommanded engine shutdown that jeopardizes safety.

Design control activity. (i) With respect to an aviation critical safety item, means the systems command of a military department that is specifically responsible for ensuring the airworthiness of an aviation system or equipment, in which an aviation critical safety item is to be used; and

(ii) With respect to a ship critical safety item, means the systems command of a military department that is specifically responsible for ensuring the seaworthiness of a ship or ship equipment, in which a ship critical safety item is to be used.

Ship critical safety item means any ship part, assembly, or support equipment containing a characteristic, the failure, malfunction, or absence of which could cause—

(i) A catastrophic or critical failure resulting in loss of, or serious damage to, the ship; or

(ii) An unacceptable risk of personal injury or loss of life.

(b) *Identification of critical safety items*. One or more of the items being procured under this contract is an aviation or ship critical safety item. The following items have been designated aviation critical safety items or ship critical safety items by the designated design control activity:

_____

_____

_____

_____

(Insert additional lines as necessary)

(c) *Heightened quality assurance surveillance*. Items designated in paragraph (b) of this clause are subject to heightened, risk-based surveillance by the designated quality assurance representative.

(End of clause)

[76 FR 52139, Aug. 19, 2011]

252.211–7000 Acquisition streamlining.

As prescribed in 211.002–70, use the following clause:

ACQUISITION STREAMLINING (OCT 2010)

(a) The Government's acquisition streamlining objectives are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost effective requirements are included in future acquisitions.

(b) The Contractor shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this contract.

(c) The Government has the right to accept, modify, or reject the Contractor's recommendations.

(d) The Contractor shall insert this clause, including this paragraph (d), in all subcontracts over $1.5 million, awarded in the performance of this contract.

(End of clause)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995; 75 FR 45074, Aug. 2, 2010]

252.211–7001 Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents. Availability of specifications and standards Not listed in DoDISS, data item descriptions Not listed in DoD 5010.12–L, and plans, drawings, and other pertinent documents.

As prescribed in 211.204(c), use the following provision:

AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS NOT LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST), AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS (MAY 2006)

Offerors may obtain the specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation by submitting a request to:

(Activity) _____

(Complete Address) _____

Include the number of the solicitation and the title and number of the specification, standard, plan, drawing, or other pertinent document.

(End of provision)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995; 71 FR 27641, May 12, 2006]

252.211–7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed in 211.204(c), use the following provision:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (DEC 1991)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

_____

(Insert complete address)

(End of provision)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995]

252.211–7003 Item identification and valuation.

As prescribed in 211.274–6(a)(1), use the following clause:

ITEM IDENTIFICATION AND VALUATION (JUN 2013)

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

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

Concatenated unique item identifier means—

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

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

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

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

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

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

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

Government's unit acquisition cost means—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery;

(2) For cost-type or undefinitized line, subline, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery; and

(3) For items produced under a time-and-materials contract, the Contractor's estimated fully burdened unit cost to the Government at the time of delivery.

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise (e.g., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at *http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm*.

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

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

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

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

Original part number means a combination of numbers or letters assigned by the enterprise at item creation to a class of items with the same form, fit, function, and interface.

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

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

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

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

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

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

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

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

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

(i) All delivered items for which the Government's unit acquisition cost is $5,000 or more.

(ii) The following items for which the Government's unit acquisition cost is less than $5,000:

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

(iii) Subassemblies, components, and parts embedded within delivered items as specified in Attachment Number ____.

(2) The unique item identifier and the component data elements of the DoD unique item identification shall not change over the life of the item.

(3) *Data syntax and semantics of unique item identifiers*. The Contractor shall ensure that—

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

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

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

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International Standard 15434), in accordance with the Air Transport Association Common Support Data Dictionary; and

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

(4) *Unique item identifier*.

(i) The Contractor shall—

(A) Determine whether to—

(*1*) Serialize within the enterprise identifier;

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

(*3*) Use a DoD recognized unique identification equivalent; and

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

(ii) The issuing agency code—

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

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

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

(1) Unique item identifier.

(2) Unique item identifier type.

(3) Issuing agency code (if concatenated unique item identifier is used).

(4) Enterprise identifier (if concatenated unique item identifier is used).

(5) Original part number (if there is serialization within the original part number).

(6) Lot or batch number (if there is serialization within the lot or batch number).

(7) Current part number (optional and only if not the same as the original part number).

(8) Current part number effective date (optional and only if current part number is used).

(9) Serial number (if concatenated unique item identifier is used).

(10) Government's unit acquisition cost.

(11) Unit of measure.

(e) For embedded subassemblies, components, and parts that require DoD unique item identification under paragraph (c)(1)(iii) of this clause, the Contractor shall report as part of, or associated with, the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Unique item identifier of the parent item under paragraph (c)(1) of this clause that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part.

(3) Unique item identifier type.**

(4) Issuing agency code (if concatenated unique item identifier is used).**

(5) Enterprise identifier (if concatenated unique item identifier is used).**

(6) Original part number (if there is serialization within the original part number).**

(7) Lot or batch number (if there is serialization within the lot or batch number).**

(8) Current part number (optional and only if not the same as the original part number).**

(9) Current part number effective date (optional and only if current part number is used).**

(10) Serial number (if concatenated unique item identifier is used).**

(11) Description.

** Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html*.

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

(End of clause)

Alternate I (DEC 2011) As prescribed in 211.274–6(a)(4) delete paragraphs (c), (d), (e), (f), and (g) of the basic clause, and add the following paragraphs (c) and (d) to the basic clause.

(c) For each item delivered under a contract line, subline, or exhibit line item under paragraph (b) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report the Government's unit acquisition cost.

(d) The Contractor shall submit the information required by paragraph (c) of this clause in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html*.

[70 FR 20836, Apr. 22, 2005, as amended at 70 FR 35549, June 21, 2005; 72 FR 52298, Sept. 13, 2007; 73 FR 27464, May 13, 2008; 73 FR 46820, Aug. 12, 2008; 75 FR 59103, Sept. 27, 2010; 76 FR 33169, June 8, 2011; 76 FR 76320, Dec. 7, 2011; 78 FR 37990, June 25, 2013]

252.211–7004 Alternate preservation, packaging, and packing.

As prescribed in 211.272, use the following provision:

ALTERNATE PRESERVATION, PACKAGING, AND PACKING (DEC 1991)

(a) The Offeror may submit two unit prices for each item—one based on use of the military preservation, packaging, or packing requirements of the solicitation; and an alternate based on use of commercial or industrial preservation, packaging, or packing of equal or better protection than the military.

(b) If the Offeror submits two unit prices, the following information, as a minimum, shall be submitted with the offer to allow evaluation of the alternate—

(1) The per unit/item cost of commercial or industrial preservation, packaging, and packing;

(2) The per unit/item cost of military preservation, packaging, and packing;

(3) The description of commercial or industrial preservation, packaging, and packing procedures, including material specifications, when applicable, to include—

(i) Method of preservation;

(ii) Quantity per unit package;

(iii) Cleaning/drying treatment;

(iv) Preservation treatment;

(v) Wrapping materials;

(vi) Cushioning/dunnage material;

(vii) Thickness of cushioning;

(viii) Unit container;

(ix) Unit package gross weight and dimensions;

(x) Packing; and

(xi) Packing gross weight and dimensions; and

(4) Item characteristics, to include—

(i) Material and finish;

(ii) Net weight;

(iii) Net dimensions; and

(iv) Fragility.

(c) If the Contracting Officer does not evaluate or accept the Offeror's proposed alternate commercial or industrial preservation, packaging, or packing, the Offeror agrees to preserve, package, or pack in accordance with the specified military requirements.

(End of provision)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995]

252.211–7005 Substitutions for military or Federal specifications and standards.

As prescribed in 211.273–4, use the following clause:

SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (NOV 2005)

(a) *Definition*. ''SPI process,'' as used in this clause, means a management or manufacturing process that has been accepted previously by the Department of Defense under

the Single Process Initiative (SPI) for use in lieu of a specific military or Federal specification or standard at specific facilities. Under SPI, these processes are reviewed and accepted by a Management Council, which includes representatives of the Contractor, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the military departments.

(b) Offerors are encouraged to propose SPI processes in lieu of military or Federal specifications and standards cited in the solicitation. A listing of SPI processes accepted at specific facilities is available via the Internet at *http://guidebook.dcma.mil/20/guidebook_process.htm* (paragraph 4.2).

(c) An offeror proposing to use an SPI process in lieu of military or Federal specifications or standards cited in the solicitation shall—

(1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted;

(2) Identify each facility at which the offeror proposes to use the specific SPI process in lieu of military or Federal specifications or standards cited in the solicitation;

(3) Identify the contract line items, subline items, components, or elements affected by the SPI process; and

(4) If the proposed SPI process has been accepted at the facility at which it is proposed for use, but is not yet listed at the Internet site specified in paragraph (b) of this clause, submit documentation of Department of Defense acceptance of the SPI process.

(d) Absent a determination that an SPI process is not acceptable for this procurement, the Contractor shall use the following SPI processes in lieu of military or Federal specifications or standards:

(*Offeror insert information for each SPI process*)

SPI Process: _____

Facility: _____

Military or Federal Specification or Standard: _____

Affected Contract Line Item Number, Subline Item Number, Component, or Element: _____

(e) If a prospective offeror wishes to obtain, prior to the time specified for receipt of offers, verification that an SPI process is an acceptable replacement for military or Federal specifications or standards required by the solicitation, the prospective offeror—

(1) May submit the information required by paragraph (d) of this clause to the Contracting Officer prior to submission of an offer; but

(2) Must submit the information to the Contracting Officer at least 10 working days prior to the date specified for receipt of offers.

(End of clause)

[64 FR 14399, Mar. 25, 1999; 64 FR 28875, May 27, 1999, as amended at 65 FR 52953, Aug. 31, 2000; 66 FR 49861, Oct. 1, 2001; 68 FR 7440, Feb. 14, 2003; 70 FR 67924, Nov. 9, 2005]

252.211–7006 Passive Radio Frequency Identification.

As prescribed in *211.275–3*, use the following clause:

PASSIVE RADIO FREQUENCY IDENTIFICATION (SEP 2011)

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

Advance shipment notice means an electronic notification used to list the contents of a shipment of goods as well as additional information relating to the shipment, such as passive radio frequency identification (RFID) or item unique identification (IUID) information, order information, product description, physical characteristics, type of packaging, marking, carrier information, and configuration of goods within the transportation equipment.

Bulk commodities means the following commodities, when shipped in rail tank cars, tanker trucks, trailers, other bulk wheeled conveyances, or pipelines:

(1) Sand.

(2) Gravel.

(3) Bulk liquids (water, chemicals, or petroleum products).

(4) Ready-mix concrete or similar construction materials.

(5) Coal or combustibles such as firewood.

(6) Agricultural products such as seeds, grains, or animal feed.

Case means either a MIL–STD–129 defined exterior container within a palletized unit load or a MIL–STD–129 defined individual shipping container.

Electronic Product Code™ (EPC®) means an identification scheme for universally identifying physical objects via RFID tags and other means. The standardized EPC™ data consists of an EPC™ (or EPC™ identifier) that uniquely identifies an individual object, as well as an optional filter value when judged to be necessary to enable effective and efficient reading of the EPC™ tags. In addition to this standardized data, certain classes of EPC™ tags will allow user-defined data. The EPC™ Tag Data Standards will define the length and position of this data, without defining its content.

EPCglobal® means a subscriber-driven organization comprised of industry leaders and organizations focused on creating global standards for the adoption of passive RFID technology.

Exterior container means a MIL–STD–129 defined container, bundle, or assembly that is sufficient by reason of material, design, and

construction to protect unit packs and intermediate containers and their contents during shipment and storage. It can be a unit pack or a container with a combination of unit packs or intermediate containers. An exterior container may or may not be used as a shipping container.

Palletized unit load means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized or skidded load is not considered to be a shipping container. A loaded 463L System pallet is not considered to be a palletized unit load. Refer to the Defense Transportation Regulation, DoD 4500.9–R, Part II, Chapter 203, for marking of 463L System pallets.

Passive RFID tag means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response. The only acceptable tags are EPC Class 1 passive RFID tags that meet the EPCglobal™ Class 1 Generation 2 standard.

Radio frequency identification (RFID) means an automatic identification and data capture technology comprising one or more reader/interrogators and one or more radio frequency transponders in which data transfer is achieved by means of suitably modulated inductive or radiating electromagnetic carriers.

Shipping container means a MIL–STD–129 defined exterior container that meets carrier regulations and is of sufficient strength, by reason of material, design, and construction, to be shipped safely without further packing (*e.g.*, wooden boxes or crates, fiber and metal drums, and corrugated and solid fiberboard boxes).

(b)(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall affix passive RFID tags, at the case- and palletized- unit-load packaging levels, for shipments of items that—

(i) Are in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(A) Subclass of Class I—Packaged operational rations.

(B) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(C) Class IIIP—Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(D) Class IV—Construction and barrier materials.

(E) Class VI—Personal demand items (nonmilitary sales items).

(F) Subclass of Class VIII—Medical materials (excluding pharmaceuticals, biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

(G) Class IX—Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(ii) Are being shipped to one of the locations listed at *http://www.acq.osd.mil/log/rfid/* or to—

(A) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1, or to—

(B) The following location(s) deemed necessary by the requiring activity:

Contract line, subline, or exhibit line item number	Location name	City	State	DoDAAC

(2) The following are excluded from the requirements of paragraph (b)(1) of this clause:

(i) Shipments of bulk commodities.

(ii) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

(c) The Contractor shall—

(1) Ensure that the data encoded on each passive RFID tag are globally unique (*i.e.*, the tag ID is never repeated across two or more RFID tags) and conforms to the requirements in paragraph (d) of this clause;

(2) Use passive tags that are readable; and

(3) Ensure that the passive tag is affixed at the appropriate location on the specific level of packaging, in accordance with MIL–STD–129 (Section 4.9.2) tag placement specifications.

(d) *Data syntax and standards.* The Contractor shall encode an approved RFID tag using the instructions provided in the EPC™ Tag Data Standards in effect at the time of contract award. The EPC™ Tag Data Standards are available at *http://www.epcglobalinc.org/standards/.*

(1) If the Contractor is an EPCglobal™ subscriber and possesses a unique EPC™

company prefix, the Contractor may use any of the identifiers and encoding instructions described in the most recent EPC™ Tag Data Standards document to encode tags.

(2) If the Contractor chooses to employ the DoD identifier, the Contractor shall use its previously assigned Commercial and Government Entity (CAGE) code and shall encode the tags in accordance with the tag identifier details located at *http://www.acq.osd.mil/log/rfid/tag_data.htm*. If the Contractor uses a third-party packaging house to encode its tags, the CAGE code of the third-party packaging house is acceptable.

(3) Regardless of the selected encoding scheme, the Contractor with which the Department holds the contract is responsible for ensuring that the tag ID encoded on each passive RFID tag is globally unique, per the requirements in paragraph (c)(1) of this clause.

(e) *Advance shipment notice*. The Contractor shall use Wide Area WorkFlow (WAWF), as required by DFARS 252.232–7003, Electronic Submission of Payment Requests, to electronically submit advance shipment notice(s) with the RFID tag ID(s) (specified in paragraph (d) of this clause) in advance of the shipment in accordance with the procedures at *https://wawf.eb.mil/*.

(End of clause)

[70 FR 53968, Sept. 13, 2005, as amended at 71 FR 29086, May 19, 2006; 72 FR 6483, Feb. 12, 2007]

252.211–7007 Reporting of Government-Furnished Property.

As prescribed in *211.274–6(b)*, use the following clause:

REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012)

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

''Commercial and Government entity (CAGE) code'' means—

(i) A code assigned by the Defense Logistics Agency Logistics Information Service to identify a commercial or Government entity; or

(ii) A code assigned by a member of the North Atlantic Treaty Organization that the Defense Logistics Agency Logistics Information Service records and maintains in the CAGE master file. The type of code is known as an ''NCAGE code.''

''Contractor-acquired property'' has the meaning given in FAR clause 52.245–1. Upon acceptance by the Government, contractor-acquired property becomes Government-furnished property.

''Government-furnished property'' has the meaning given in FAR clause 52.245–1.

''Item unique identification (IUID)'' means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

''IUID Registry'' means the DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property. The IUID Registry is—

(i) The authoritative source of Government unit acquisition cost for items with unique item identification (see DFARS 252.211–7003) that were acquired after January 1, 2004;

(ii) The master data source for Government-furnished property; and

(iii) An authoritative source for establishing the acquisition cost of end-item equipment.

''National stock number (NSN)'' means a 13-digit stock number used to identify items of supply. It consists of a four-digit Federal Supply Code and a nine-digit National Item Identification Number.

''Nomenclature'' means—

(i) The combination of a Government-assigned type designation and an approved item name;

(ii) Names assigned to kinds and groups of products; or

(iii) Formal designations assigned to products by customer or supplier (such as model number or model type, design differentiation, or specific design series or configuration).

''Part or identifying number (PIN)'' means the identifier assigned by the original design activity, or by the controlling nationally recognized standard, that uniquely identifies (relative to that design activity) a specific item.

''Reparable'' means an item, typically in unserviceable condition, furnished to the Contractor for maintenance, repair, modification, or overhaul.

''Serially managed item'' means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

''Supply condition code'' means a classification of materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel (see *http://www2.dla.mil/j-6/dlmso/elibrary/manuals/dlm/dlm_pubs.asp*).

''Unique item identifier (UII)'' means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes, in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

''Unit acquisition cost'' has the meaning given in FAR clause 52.245–1.

(b) *Reporting Government-furnished property to the IUID Registry*. Except as provided in paragraph (c) of this clause, the Contractor shall report, in accordance with paragraph (f), Government-furnished property to the IUID Registry as follows:—

(1) Up to and including December 31, 2013, report serially managed Government-furnished property with a unit-acquisition cost of $5,000 or greater.

(2) Beginning January 1, 2014, report—

(i) All serially managed Government-furnished property, regardless of unit-acquisition cost; and

(ii) Contractor receipt of non-serially managed items. Unless tracked as an individual item, the Contractor shall report non-serially managed items to the Registry in the same unit of packaging, e.g., original manufacturer's package, box, or container, as it was received.

(c) *Exceptions*. Paragraph (b) of this clause does not apply to—

(1) Contractor-acquired property;

(2) Property under any statutory leasing authority;

(3) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(4) Intellectual property or software;

(5) Real property; or

(6) Property released for work in process.

(d) *Data for reporting to the IUID Registry*. To permit reporting of Government-furnished property to the IUID Registry, the Contractor's property management system shall enable the following data elements in addition to those required by paragraph (f)(1)(iii)(A)(1) through (3), (5), (7), (8), and (10) of the Government Property clause of this contract (FAR 52.245–1):

(1) Received/Sent (shipped) date.

(2) Status code.

(3) Accountable Government contract number.

(4) Commercial and Government Entity (CAGE) code on the accountable Government contract.

(5) Mark record.

(i) Bagged or tagged code (for items too small to individually tag or mark).

(ii) Contents (the type of information recorded on the item, e.g., item internal control number).

(iii) Effective date (date the mark is applied).

(iv) Added or removed code/flag.

(v) Marker code (designates which code is used in the marker identifier, e.g., D=CAGE, UN=DUNS, LD=DODAAC).

(vi) Marker identifier, e.g., Contractor's CAGE code or DUNS number.

(vii) Medium code; how the data is recorded, e.g., barcode, contact memory button.

(viii) Value, e.g., actual text or data string that is recorded in its human-readable form.

(ix) Set (used to group marks when multiple sets exist.

(6) Appropriate supply condition code, required only for reporting of reparables, per Appendix 2 of DoD 4000.25–2–M, Military Standard Transaction Reporting and Accounting Procedures manual (*http://www2.dla.mil/j-6/dlmso/elibrary/manuals/dlm/dlm_pubs.asp*).

(e) When Government-furnished property is in the possession of subcontractors, Contractors shall ensure that reporting is accomplished using the data elements required in paragraph (d) of this clause.

(f) *Procedures for reporting of Government-furnished property*. Except as provided in paragraph (c) of this clause, the Contractor shall establish and report to the IUID Registry the information required by FAR clause 52.245–1, paragraphs (e) and (f)(1)(iii), in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html*.

(g) *Procedures for updating the IUID Registry*.

(1) Except as provided in paragraph (g)(2), the Contractor shall update the IUID Registry at *https://iuid.logisticsinformationservice.dla.mil/* for changes in status, mark, custody, condition code (for reparables only), or disposition of items that are—

(i) Received by the Contractor;

(ii) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;

(iii) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;

(iv) Disposed of; or

(v) Transferred to a follow-on or other contract.

(2) The Contractor need not report to the IUID Registry those transactions reported or to be reported to the following DCMA etools:

(i) Plant Clearance Automated Reutilization and Screening System (PCARSS); or

(ii) Lost, Theft, Damaged or Destroyed (LTDD) system.

(3) The contractor shall update the IUID Registry as transactions occur or as otherwise stated in the Contractor's property management procedure.

(End of clause)

[77 FR 52257, Aug. 29, 2012, as amended at 78 FR 13544, Feb. 28, 2013]

252.211–7008 Use of Government-assigned Serial Numbers

As prescribed in 211.274–6(c), use the following clause:

USE OF GOVERNMENT-ASSIGNED SERIAL NUMBERS (SEP 2010)

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

Government-assigned serial number means a combination of letters or numerals in a fixed human-readable information format (text) conveying information about a major end item, which is provided to a contractor by the requiring activity with accompanying technical data instructions for marking the Government-assigned serial number on major end items to be delivered to the Government.

Major end item means a final combination of component parts and/or materials which is ready for its intended use and of such importance to operational readiness that review and control of inventory management functions (procurement, distribution, maintenance, disposal, and asset reporting) is required at all levels of life cycle management. Major end items include aircraft; ships; boats; motorized wheeled, tracked, and towed vehicles for use on highway or rough terrain; weapon and missile end items; ammunition; and sets, assemblies, or end items having a major end item as a component.

Unique item identifier (UII) means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD-recognized unique identification equivalent.

(b) The Contractor shall mark the Government-assigned serial numbers on those major end items as specified by line item in the Schedule, in accordance with the technical instructions for the placement and method of application identified in the terms and conditions of the contract.

(c) The Contractor shall register the Government-assigned serial number along with the major end item's UII at the time of delivery in accordance with the provisions of the clause at DFARS 252.211–7003(d).

(d) The Contractor shall establish the UII for major end items for use throughout the life of the major end item. The Contractor may elect, but is not required, to use the Government-assigned serial number to construct the UII.

(End of clause)

[75 FR 59103, Sept. 27, 2010]

252.212–7000—252.212–7001 [Reserved]

252.212–7002 Pilot Program for Acquisition of Military-purpose Nondevelopmental Items.

As prescribed in 212.7103, use the following provision:

PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS (JUN 2012)

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

Military-purpose nondevelopmental item means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. An item shall not be considered to be developed at private expense if development of the item was paid for in whole or in part through—

(1) Independent research and development costs or bid and proposal costs, per the definition in FAR 31.205–18, that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

(2) Foreign government funding.

''Nondevelopmental item'' is defined in FAR 2.101 and for the purpose of this subpart also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement of DFARS 212.7102–2(d)(1).

Nontraditional defense contractor means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any of the following for the Department of Defense—

(1) Any contract or subcontract that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. section 1502 and the regulations implementing such section; or

(2) Any other contract in excess of the certified cost or pricing data threshold under which the contractor is required to submit certified cost or pricing data.

(b) *Notice.* This is a procurement action under section 866 of the National Defense Authorization Act for Fiscal Year 2011, Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, and is subject to the limitations outlined in DFARS 212.7102.

(c) *Representation.* By submission of its offer, the offeror represents that it is a nontraditional defense contractor.

(End of provision)

[76 FR 38050, June 29, 2011, as amended at 77 FR 35881, June 15, 2012]

252.215–7000 Pricing adjustments.

As prescribed in 215.408(1), use the following clause:

PRICING ADJUSTMENTS (DEC 2012)

The term ''pricing adjustment,'' as used in paragraph (a) of the clauses entitled ''Price Reduction for Defective Certified Cost or Pricing Data—Modifications,'' ''Subcontractor Certified Cost or Pricing Data,'' and ''Subcontractor Certified Cost or Pricing Data—Modifications,'' means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 40473, July 29, 1997; 63 FR 55052, Oct. 14, 1998; 77 FR 76941, Dec. 31, 2012; 78 FR 13544, Feb. 28, 2013]

252.215–7001 [Reserved]

252.215–7002 Cost estimating system requirements.

As prescribed in 215.408(2), use the following clause:

COST ESTIMATING SYSTEM REQUIREMENTS (DEC 2012)

(a) *Definitions.*

Acceptable estimating system means an estimating system that complies with the system criteria in paragraph (d) of this clause, and provides for a system that—

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Contractor's related management systems; and

(4) Is subject to applicable financial control systems.

Estimating system means the Contractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's—

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon data and information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish, maintain, and comply with an acceptable estimating system.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the Contractor is a large business and either—

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $50 million or more for which certified cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract—

(i) Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which certified cost or pricing data were required; and

(ii) Was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO), in writing. If the Contractor wishes the Government to protect the data and information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is acceptable when the Contractor has provided the ACO with documentation that—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:

(i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.

(ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.

(iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures.

(iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.

(v) Provide for adequate supervision throughout the estimating and budgeting process.

(vi) Provide for consistent application of estimating and budgeting techniques.

(vii) Provide for detection and timely correction of errors.

(viii) Protect against cost duplication and omissions.

(ix) Provide for the use of historical experience, including historical vendor pricing data, where appropriate.

(x) Require use of appropriate analytical methods.

(xi) Integrate data and information available from other management systems.

(xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.

(xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.

(xiv) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner throughout the negotiation process.

(xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.

(xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.

(xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement.

(e) *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 estimating system. 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; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(f) 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.

(g) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's estimating system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

[76 FR 28873, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012; 77 FR 11775, Feb. 28, 2012; 77 FR 76941, Dec. 31, 2012]

252.215–7003 Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation.

As prescribed at 215.408(5)(i), use the following provision:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—CANADIAN COMMERCIAL CORPORATION (JUL 2012)

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following:

(i) Profit rate or fee (as applicable).

(ii) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404–1).

(iii) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the

proposed price is fair and reasonable [*U.S. Contracting Officer to insert description of the data required in accordance with FAR 15.403–3(a)(1)*].

(c) As specified in FAR 15.403–3(a)(4), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(End of provision)

[77 FR 43473, July 24, 2012]

252.215–7004 Requirement for Submission of Data Other Than Certified Cost or Pricing Data—Modifications–Canadian Commercial Corporation.

As prescribed at 215.408(5)(ii), use the following clause:

REQUIREMENT FOR SUBMISSION OF DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS—CANADIAN COMMERCIAL CORPORATION (JUL 2012)

(a) Submission of certified cost or pricing data is not required.

(b) Canadian Commercial Corporation shall obtain and provide the following for modifications that exceed the simplified acquisition threshold [*or higher dollar value specified by the U.S. Contracting Officer in the solicitation*].

(i) Profit rate or fee (as applicable).

(ii) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404–1).

(iii) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [*U.S. Contracting Officer to insert description of the data required in accordance with FAR 15.403–3(a)(1)*].

(End of clause)

[77 FR 43473, July 24, 2012]

252.215–7005 Evaluation Factor for Employing or Subcontracting With Members of the Selected Reserve.

As prescribed in 215.370–3(a), use the following provision:

EVALUATION FACTOR FOR EMPLOYING OR SUBCONTRACTING WITH MEMBERS OF THE SELECTED RESERVE (OCT 2008)

(a) *Definition. Selected Reserve*, as used in this provision, has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

(b) This solicitation includes an evaluation factor that considers the offeror's intended use of employees, or individual subcontractors, who are members of the Selected Reserve.

(c) If the offeror, in the performance of any contract resulting from this solicitation, intends to use employees or individual subcontractors who are members of the Selected Reserve, the offeror's proposal shall include documentation to support this intent. Such documentation may include, but is not limited to—

(1) Existing company documentation, such as payroll or personnel records, indicating the names of the Selected Reserve members who are currently employed by the company; or

(2) A statement that one or more positions will be set aside to be filled by new hires of Selected Reserve members, along with verifying documentation.

(End of provision)

[73 FR 62212, Oct. 20, 2008]

252.215–7006 Use of Employees or Individual Subcontractors Who Are Members of the Selected Reserve.

As prescribed in 215.370–3(b), use the following clause:

USE OF EMPLOYEES OR INDIVIDUAL SUBCONTRACTORS WHO ARE MEMBERS OF THE SELECTED RESERVE (OCT 2008)

(a) *Definition. Selected Reserve*, as used in this clause, has the meaning given that term in 10 U.S.C. 10143. Selected Reserve members normally attend regular drills throughout the year and are the group of Reserves most readily available to the President.

(b) If the Contractor stated in its offer that it intends to use members of the Selected Reserve in the performance of this contract—

(1) The Contractor shall use employees, or individual subcontractors, who are members of the Selected Reserve in the performance of the contract to the fullest extent consistent with efficient contract performance; and

(2) The Government has the right to terminate the contract for default if the Contractor willfully or intentionally fails to use

members of the Selected Reserve, as employees or individual subcontractors, in the performance of the contract.

(End of clause)

[73 FR 62212, Oct. 20, 2008]

252.215–7007 Notice of Intent to Resolicit.

As prescribed at 215.408(3), use the following provision:

NOTICE OF INTENT TO RESOLICIT (JUN 2012)

This solicitation provides offerors fewer than 30 days to submit proposals. In the event that only one offer is received in response to this solicitation, the Contracting Officer may cancel the solicitation and resolicit for an additional period of at least 30 days in accordance with 215.371–2.

(End of provision)

[77 FR 39139, June 29, 2012]

252.215–7008 Only One Offer.

As prescribed at 215.408(4), use the following provision:

ONLY ONE OFFER (JUN 2012)

(a) The provision at FAR 52.215–20, Requirements for Certified Cost or Pricing Data and Data other Than Certified Cost or Pricing Data, with any alternate included in this solicitation, does not take effect unless the Contracting Officer notifies the offeror that—

(1) Only one offer was received; and

(2) Additional cost or pricing data is required in order to determine whether the price is fair and reasonable or to comply with the statutory requirement for certified cost or pricing data (10 U.S.C. 2306a and FAR 15.403–3).

(b) Upon such notification, the offeror agrees, by submission of its offer, to provide any data requested by the Contracting Officer in accordance with FAR 52.215–20.

(c) If negotiations are conducted, the negotiated price should not exceed the offered price.

(End of provision)

[77 FR 39139, June 29, 2012]

252.215–7009 Proposal adequacy checklist.

As prescribed in 215.408(6), use the following provision:

PROPOSAL ADEQUACY CHECKLIST (MAR 2013)

The offeror shall complete the following checklist, providing location of requested information, or an explanation of why the requested information is not provided. In preparation of the offeror's checklist, offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.

PROPOSAL ADEQUACY CHECKLIST

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			
1. FAR 15.408, Table 15–2, Section I Paragraph A.	Is there a properly completed first page of the proposal per FAR 15.408 Table 15–2 I.A or as specified in the solicitation?		
2. FAR 15.408, Table 15–2, Section I Paragraph A(7).	Does the proposal identify the need for Government-furnished material/tooling/test equipment? Include the accountable contract number and contracting officer contact information if known.		
3. FAR 15.408, Table 15–2, Section I Paragraph A(8).	Does the proposal identify and explain notifications of noncompliance with Cost Accounting Standards Board or Cost Accounting Standards (CAS); any proposal inconsistencies with your disclosed practices or applicable CAS; and inconsistencies with your established estimating and accounting principles and procedures?		
4. FAR 15.408, Table 15–2, Section I, Paragraph C(1).	Does the proposal disclose any other known activity that could materially impact the costs?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
FAR 2.101, ''Cost or pricing data''	This may include, but is not limited to, such factors as— (1) Vendor quotations; (2) Nonrecurring costs; (3) Information on changes in production methods and in production or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit-cost trends such as those associated with labor efficiency; (6) Make-or-buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs.		
5. FAR 15.408, Table 15–2, Section I Paragraph B.	Is an Index of all certified cost or pricing data and information accompanying or identified in the proposal provided and appropriately referenced?		
6. FAR 15.403–1(b)	Are there any exceptions to submission of certified cost or pricing data pursuant to FAR 15.403–1(b)? If so, is supporting documentation included in the proposal? (Note questions 18–20.)		
7. FAR 15.408, Table 15–2, Section I Paragraph C(2)(i).	Does the proposal disclose the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data?		
8. FAR 15.408, Table 15–2, Section I Paragraph C(2)(ii).	Does the proposal disclose the nature and amount of any contingencies included in the proposed price?		
9. FAR 15.408 Table 15–2, Section II, Paragraph A or B.	Does the proposal explain the basis of all cost estimating relationships (labor hours or material) proposed on other than a discrete basis?		
10. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	Is there a summary of total cost by element of cost and are the elements of cost cross-referenced to the supporting cost or pricing data? (Breakdowns for each cost element must be consistent with your cost accounting system, including breakdown by year.)		
11. FAR 15.408, Table 15–2, Section I Paragraphs D and E.	If more than one Contract Line Item Number (CLIN) or sub Contract Line Item Number (sub-CLIN) is proposed as required by the RFP, are there summary total amounts covering all line items for each element of cost and is it cross-referenced to the supporting cost or pricing data?		
12. FAR 15.408, Table 15–2, Section I Paragraph F.	Does the proposal identify any incurred costs for work performed before the submission of the proposal?		
13. FAR 15.408, Table 15–2, Section I Paragraph G.	Is there a Government forward pricing rate agreement (FPRA)? If so, the offeror shall identify the official submittal of such rate and factor data. If not, does the proposal include all rates and factors by year that are utilized in the development of the proposal and the basis for those rates and factors?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
	COST ELEMENTS		
	MATERIALS AND SERVICES		
14. FAR 15.408, Table 15–2, Section II Paragraph A.	Does the proposal include a consolidated summary of individual material and services, frequently referred to as a Consolidated Bill of Material (CBOM), to include the basis for pricing? The offeror's consolidated summary shall include raw materials, parts, components, assemblies, subcontracts and services to be produced or performed by others, identifying as a minimum the item, source, quantity, and price.		
	SUBCONTRACTS (Purchased materials or services)		
15. DFARS 215.404–3	Has the offeror identified in the proposal those subcontractor proposals, for which the contracting officer has initiated or may need to request field pricing analysis?		
16. FAR 15.404–3(c) FAR 52.244–2	Per the thresholds of FAR 15.404–3(c), Subcontract Pricing Considerations, does the proposal include a copy of the applicable subcontractor's certified cost or pricing data?		
17. FAR 15.408, Table 15–2, Note 1; Section II Paragraph A.	Is there a price/cost analysis establishing the reasonableness of each of the proposed subcontracts included with the proposal? If the offeror's price/cost analyses are not provided with the proposal, does the proposal include a matrix identifying dates for receipt of subcontractor proposal, completion of fact finding for purposes of price/cost analysis, and submission of the price/cost analysis?		
	EXCEPTIONS TO CERTIFIED COST OR PRICING DATA		
18. FAR 52.215–20 FAR 2.101, ''commercial item''	Has the offeror submitted an exception to the submission of certified cost or pricing data for commercial items proposed either at the prime or subcontractor level, in accordance with provision 52.215–20? a. Has the offeror specifically identified the type of commercial item claim (FAR 2.101 commercial item definition, paragraphs (1) through (8)), and the basis on which the item meets the definition? b. For modified commercial items (FAR 2.101 commercial item definition paragraph (3)); did the offeror classify the modification(s) as either— i. A modification of a type customarily available in the commercial marketplace (paragraph (3)(i)); or ii. A minor modification (paragraph (3)(ii)) of a type not customarily available in the commercial marketplace made to meet Federal Government requirements not exceeding the thresholds in FAR 15.403–1(c)(3)(iii)(B)?		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
	c. For proposed commercial items ''of a type'', or ''evolved'' or modified (FAR 2.101 commercial item definition paragraphs (1) through (3)), did the contractor provide a technical description of the differences between the proposed item and the comparison item(s)?		
19. FAR 15.408, Table 15–2, Section II Paragraph A.	Does the proposal include a price analysis for all commercial items offered that are not available to the general public?		
20. FAR 15.408, Table 15–2, Section II Paragraph A(1).	Does the proposal support the degree of competition and the basis for establishing the source and reasonableness of price for each subcontract or purchase order priced on a competitive basis exceeding the threshold for certified cost or pricing data?		
	INTERORGANIZATIONAL TRANSFERS		
21. FAR 15.408, Table 15–2, Section II Paragraph A.(2).	For inter-organizational transfers proposed at cost, does the proposal include a complete cost proposal in compliance with Table 15–2?		
22. FAR 15.408, Table 15–2, Section II Paragraph A(1).	For inter-organizational transfers proposed at price in accordance with FAR 31.205–26(e), does the proposal provide an analysis by the prime that supports the exception from certified cost or pricing data in accordance with FAR 15.403–1?		
	DIRECT LABOR		
23. FAR 15.408, Table 15–2, Section II Paragraph B.	Does the proposal include a time phased (*i.e.*; monthly, quarterly) breakdown of labor hours, rates and costs by category or skill level? If labor is the allocation base for indirect costs, the labor cost must be summarized in order that the applicable overhead rate can be applied.		
24. FAR 15.408, Table 15–2, Section II Paragraph B.	For labor Basis of Estimates (BOEs), does the proposal include labor categories, labor hours, and task descriptions—(e.g.; Statement of Work reference, applicable CLIN, Work Breakdown Structure, rationale for estimate, applicable history, and time-phasing)?		
25. FAR subpart 22.10	If covered by the Service Contract Labor Standards statute (41 U.S.C. chapter 67), are the rates in the proposal in compliance with the minimum rates specified in the statute?		
	INDIRECT COSTS		
26. FAR 15.408, Table 15–2, Section II Paragraph C.	Does the proposal indicate the basis of estimate for proposed indirect costs and how they are applied? (Support for the indirect rates could consist of cost breakdowns, trends, and budgetary data.)		

PROPOSAL ADEQUACY CHECKLIST—Continued

References	Submission item	Proposal page No.	If not provided EXPLAIN (may use continuation pages)
OTHER COSTS			
27. FAR 15.408, Table 15–2, Section II Paragraph D.	Does the proposal include other direct costs and the basis for pricing? If travel is included does the proposal include number of trips, number of people, number of days per trip, locations, and rates (e.g. airfare, per diem, hotel, car rental, etc)?		
28. FAR 15.408, Table 15–2, Section II Paragraph E.	If royalties exceed $1,500 does the proposal provide the information/data identified by Table 15–2?		
29. FAR 15.408, Table 15–2, Section II Paragraph F.	When facilities capital cost of money is proposed, does the proposal include submission of Form CASB–CMF or reference to an FPRA/FPRP and show the calculation of the proposed amount?		
FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES			
30. FAR 15.408, Table 15–2, Section III	Are all cost element breakdowns provided using the applicable format prescribed in FAR 15.408, Table 15–2 III? (or alternative format if specified in the request for proposal)		
31. FAR 15.408, Table 15–2, Section III Paragraph B.	If the proposal is for a modification or change order, have cost of work deleted (credits) and cost of work added (debits) been provided in the format described in FAR 15.408, Table 15–2.III.B?		
32. FAR 15.408, Table 15–2, Section III Paragraph C.	For price revisions/redeterminations, does the proposal follow the format in FAR 15.408, Table 15–2.III.C?		
OTHER			
33. FAR 16.4	If an incentive contract type, does the proposal include offeror proposed target cost, target profit or fee, share ratio, and, when applicable, minimum/maximum fee, ceiling price?		
34. FAR 16.203–4 and FAR 15.408 Table 15–2, Section II, Paragraphs A, B, C, and D.	If Economic Price Adjustments are being proposed, does the proposal show the rationale and application for the economic price adjustment?		
35. FAR 52.232–28	If the offeror is proposing Performance-Based Payments—did the offeror comply with FAR 52.232–28?		
36. FAR 15.408(n) ..... FAR 52.215–22 FAR 52.215–23	Excessive Pass-through Charges—Identification of Subcontract Effort: If the offeror intends to subcontract more than 70% of the total cost of work to be performed, does the proposal identify: (i) the amount of the offeror's indirect costs and profit applicable to the work to be performed by the proposed subcontractor(s); and (ii) a description of the added value provided by the offeror as related to the work to be performed by the proposed subcontractor(s)?		

(End of provision)

[78 FR 18872, Mar. 28, 2013]

252.216–7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 216.203–4–70(a)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (MAR 2012)

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

Established price means a price which is an established catalog or market price for a commercial item sold in substantial quantities to the general public.

Unit price excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) As represented by the Contractor in its offer, the unit price stated for _____ *(Identify the item)* is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997; 62 FR 40473, July 29, 1997; 77 FR 19130, Mar. 30, 2012]

252.216–7001 Economic price adjustment—nonstandard steel items.

As prescribed in 216.203–4–70(b), use the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (JUL 1997)

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

Base labor index means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

Base steel index means the Contractor's established price (see note 6) including all applicable extras of $_____ per _____ (see note 1) for _____ (see note 2) on the date set for bid opening (or the date of submission of the offer).

Current labor index means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

Current steel index means the Contractor's established price (see note 6) for that item, including all applicable extras in effect _____ days (see note 3) prior to the first day of the month in which delivery is required.

Established price is—

(1) A price which is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)

Labor index means the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see note 4) for any particular month.

Month means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of *month*.

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the *base steel index* definition in paragraph (a) shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. (See note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the ''*base labor index*'' and the ''*current labor index*.''

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the ''*base steel index*'' and the ''*current steel index*.''

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to _____ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the *base labor index* and the *current labor index;* and

(ii) The Contractor's established prices (see note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the *base steel index* and the *current steel index*.

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated

item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled ''*Default*,'' the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes:

1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.

2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.

3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the *labor index* definition.

4 Offeror identify the shop and plant in which the standard steel mill item identified under the *base steel index* definition will be finally fabricated or processed into the contract item.

5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

6 In negotiated acquisitions of nonstandard steel items, when there is no *established price* or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997; 62 FR 40473, July 29, 1997]

252.216–7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.

As prescribed in 216.601(e), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216–29:

ALTERNATE A, TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (FEB 2007)

(c) The offeror must establish fixed hourly rates using separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control.

[71 FR 74471, Dec. 12, 2006]

252.216–7003 Economic price adjustment—wage rates or material prices controlled by a foreign government.

As prescribed in 216.203–4–70(c)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT (MAR 2012)

(a) As represented by the Contractor in its offer, the prices set forth in this contract—

(1) Are based on the wage rates or material prices established and controlled by the government of the country specified by the Contractor in its offer; and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the

Contractor's request is received later, the effective date shall be the date that the Contracting Officer received the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

[62 FR 34128, June 24, 1997]

252.216–7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in 216.406 use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (SEP 2011)

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

Covered incident—

(i) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (a)(ii) of this definition—

(A) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(B) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(ii) Includes those incidents that have resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of $5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(*1*) The payment of a monetary fine or penalty of $5,000 or more; or

(*2*) The payment of a reimbursement, restitution, or damages in excess of $100,000.

(D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(ii)(A), (a)(ii)

(B), or (a)(ii)(C).

(E) In a DoD investigation of the Contractor or its subcontractors at any tier not subject to the jurisdiction of the U.S. courts, a final determination by the Secretary of Defense of Contractor or subcontractor fault (see DFARS 216.405–2–70.

Serious bodily injury means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor's or its subcontractor's actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

[76 FR 57677, Sept. 16, 2011]

252.216–7005 Award Fee.

As prescribed in 216.406(e)(2), insert the following clause:

Award Fee (FEB 2011)

The Contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the award-fee plan in this contract. In no event will award fee be paid to the Contractor for any evaluation period in which the Government rates the Contractor's overall cost, schedule, and technical performance below satisfactory. The Contracting Officer may unilaterally revise the award-fee plan prior to the beginning of any rating period in order to redirect contractor emphasis.

(End of clause)

[76 FR 8305, Feb. 14, 2011]

252.216–7006 Ordering.

As prescribed in 216.506(a), use the following clause:

Ordering (MAY 2011)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the contract schedule. Such orders may be issued from _____ through _____ [*insert dates*].

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

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

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

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

(End of clause)

[76 FR 25568, May 5, 2011]

252.216–7007 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products-representation.

As prescribed in 216.203–4–70(a)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS—REPRESENTATION (MAR 2012)

(a) *Definitions.* The terms ''established price'' and ''unit price,'' as used in this provision, have the meaning given in the clause 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) By submission of its offer, the offeror represents that the unit price stated in this offer for _____ (*Identify the item*) is not in excess of the offeror's established price in effect on the date set for opening of bids (or the contract date if this is to be a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the offeror from its catalog, list, or schedule price.

(End of provision)

[77 FR 19131, Mar. 30, 2012]

252.216–7008 Economic price adjustment—wage rates or material prices controlled by a foreign government—representation.

As prescribed in 216.203–4–70(c)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT—REPRESENTATION (MAR 2012)

(a) By submission of its offer, the offeror represents that the prices set forth in this offer—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of _____ (*Offeror insert name of host country*), and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(End of provision)

[77 FR 19131, Mar. 30, 2012]

252.216–7009 Allowability of legal costs incurred in connection with a whistleblower proceeding.

As prescribed in 216.307(a), use the following clause:

ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A WHISTLEBLOWER PROCEEDING (SEP 2013)

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112–239), notwithstanding FAR clause 52.216–7, Allowable Cost and Payment—

(1) The restrictions of FAR 31.205–47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 2409, entitled ''Contractor employees: protection from reprisal for disclosure of certain information;'' and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 2409 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 2409.

(End of clause)

[78 FR 59861, Sept. 30, 2013]

252.217–7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed in 217.208–70(a), use the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (DEC 1991)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

_____

(Insert name of country, or To Be Determined)

_____

(Insert applicable CLIN)

(End of clause)

Alternate I (DEC 1991). As prescribed in 217.208–70(a)(1), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

252.217–7001 Surge option.

As prescribed in 217.208–70(b), use the following clause:

SURGE OPTION (AUG 1992)

(a) *General*. The Government has the option to—

(1) Increase the quantity of supplies or services called for under this contract by no more than _____ percent; and/or

(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

(b) *Schedule*. (1) When the Production Surge Plan (DI-MGMT-80969) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no Production Surge Plan in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor's existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) *Exercise of option*. (1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) *Price negotiation*. (1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the date of option exercise, submit to the Contracting Officer a cost or price proposal (including a cost breakdown) for the added or accelerated items.

(2) Failure to agree on a cost or price in negotiations resulting from the exercise of this option shall constitute a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the performance of the contract, as modified, while any resulting claim is being settled.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.217–7002 Offering property for exchange.

As prescribed in 217.7005, use the following provision:

OFFERING PROPERTY FOR EXCHANGE (JUN 2012)

(a) The property described in item number _____, is being offered in accordance with the exchange provisions of 40 U.S.C. 503.

(b) The property is located at (insert address). Offerors may inspect the property during the period (insert beginning and ending dates and insert hours during day).

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 77 FR 35882, June 15, 2012]

252.217–7003 Changes.

As prescribed in 217.7104(a), use the following clause:

CHANGES (DEC 1991)

(a) The Contracting Officer may, at any time and without notice to the sureties, by written change order, make changes within the general scope of any job order issued under the Master Agreement in—

(1) Drawings, designs, plans, and specifications;

(2) Work itemized;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Any other requirement of the job order.

(b) If a change causes an increase or decrease in the cost of, or time required for, performance of the job order, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the price or date of completion, or both, and shall modify the job order in writing.

(1) Within ten days after the Contractor receives notification of the change, the Contractor shall submit to the Contracting Officer a request for price adjustment, together with a written estimate of the increased cost.

(2) The Contracting Officer may grant an extension of this period if the Contractor requests it within the ten day period.

(3) If the circumstances justify it, the Contracting Officer may accept and grant a request for equitable adjustment at any later time prior to final payment under the job order, except that the Contractor may not receive profit on a payment under a late request.

(c) If the Contractor includes in its claim the cost of property made obsolete or excess as a result of a change, the Contracting Officer shall have the right to prescribe the manner of disposition of that property.

(d) Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause.

(e) Nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

[75 FR 49849, Aug. 16, 2010]

252.217–7004 Job orders and compensation.

As prescribed in 217.7104(a), use the following clause:

JOB ORDERS AND COMPENSATION (MAY 2006)

(a) The Contracting Officer shall solicit bids or proposals and make award of job orders. The issuance of a job order signed by the Contracting Officer constitutes award. The job order shall incorporate the terms and conditions of the Master Agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores, would be endangered by delay, or whenever the Contracting Officer determines that military necessity requires that immediate work on a vessel is necessary, the Contracting Officer may issue a written order to perform that work and the Contractor hereby agrees to comply with that order and to perform work on such vessel within its capabilities.

(1) As soon as practicable after the issuance of the order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering the work.

(2) The Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of the work. The Contractor shall maintain, and make available for inspection by the Contracting Officer or the Contracting Officer's representative, records supporting the cost of performing the work.

(3) Failure of the parties to agree upon the price of the work shall constitute a dispute within the meaning of the Disputes clause of the Master Agreement. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(c)(1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

[75 FR 49849, Aug. 16, 2010]

252.217–7005 Inspection and manner of doing work.

As prescribed in 217.7104(a), use the following clause:

INSPECTION AND MANNER OF DOING WORK (JUL 2009)

(a) The Contractor shall perform work in accordance with the job order, any drawings

and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the job order and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the job order.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials;

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in a job order, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair;

(6) Furnish the Contracting Officer or designated representative with a copy of the ''gas-free'' or ''safe-for-hotwork'' certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 °F, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the job order requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from

accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the job order specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area ''broom clean.''

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997; 74 FR 37647, July 29, 2009]

252.217–7006 Title.

As prescribed in 217.7104(a), use the following clause:

TITLE (DEC 1991)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of a job order shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

252.217–7007 Payments.

As prescribed in 217.7104(a), use the following clause:

PAYMENTS (DEC 1991)

(a) *Progress payments,* as used in this clause, means payments made before completion of work in progress under a job order.

(b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order.

(1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission.

(2) The Government need not make progress payments for invoices aggregating less than $5,000.

(3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments.

(4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.

(c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.

(d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct—

(1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and

(2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.

(e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.

(f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.

(End of clause)

252.217–7008 Bonds.

As prescribed in 217.7104(a), use the following clause:

BONDS (DEC 1991)

(a) If the solicitation requires an offeror to submit a bid bond, the Offeror may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Offeror shall not include in the price any contingency to cover the premium of such a bond.

(c) Even if the solicitation does not require bonds, the Contracting Officer may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer. Where performance and payment bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise becomes unacceptable to the Government, the Contracting Officer may require the Contractor to furnish whatever additional security the Contracting Officer determines necessary to protect the interests of the Government and of persons supplying labor or materials in the performance of the work contemplated under the Master Agreement.

(End of clause)

252.217–7009 Default.

As prescribed in 217.7104(a), use the following clause:

DEFAULT (DEC 1991)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written notice of default to the Contractor, terminate the whole or any part of a job order if the Contractor fails to—

(1) Make delivery of the supplies or to perform the services within the time specified in a job order or any extension;

(2) Make progress, so as to endanger performance of the job order; or

(3) Perform any of the other provisions of this agreement or a job order.

(b) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

(c) If the Contractor's failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified.

(d) If the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause—

(1) The Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer.

(i) The Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause.

(ii) If the work is to be completed at the plant, the Government may use all tools, machinery, facilities, and equipment of the Contractor determined by the Contracting Office to be necessary for that purpose.

(iii) If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made before the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(2) The Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, any completed supplies and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called ''manufacturing materials'') as the Contractor has specifically produced or specifically acquired for the performance of the terminated part of the job order.

(i) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest.

(ii) The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(e) If, after notice of termination of the job order, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of

termination had been issued for the convenience of the Government.

(f) If the Contractor fails to complete the performance of a job order within the time specified, or any extension, the actual damage to the Government for the delay will be difficult or impossible to determine.

(1) In lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days).

(2) If the Government terminates the job order, the Contractor shall be liable, in addition to the excess costs provided in paragraph (d) of this clause, for liquidated damages accruing until such time as the Government may reasonably obtain completion of the work.

(3) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor. Subject to the provisions of the Disputes clause of the Master Agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217–7010 Performance.

As prescribed in 217.7104(a), use the following clause:

PERFORMANCE (JUL 2009)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order,—

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 74 FR 37648, July 29, 2009]

252.217–7011 Access to vessel.

As prescribed at 217.7104(a), use the following clause:

ACCESS TO VESSEL (DEC 1991)

(a) Upon the request of the Contracting Officer, the Contractor shall grant admission to the Contractor's facilities and access to vessel, on a non-interference basis, as necessary to perform their respective responsibilities, to a reasonable number of:

(1) Government and other Government contractor employees (in addition to those Government employees attached to the vessel); and

(2) Representatives of offerors on other contemplated Government work.

(b) All personnel granted access shall comply with Contractor rules governing personnel at its shipyard.

(End of clause)

252.217–7012 Liability and insurance.

As prescribed in 217.7104(a), use the following clause:

LIABILITY AND INSURANCE (AUG 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) *Loss or damage to the vessel, materials, or equipment.* (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontracts; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a co-defendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $50,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provisions of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this agreement and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or

damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payment, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event or loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any other right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of the agreement.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this agreement.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 68 FR 50478, Aug. 21, 2003]

252.217–7013 Guarantees.

As prescribed in 217.7104(a), use the following clause:

GUARANTEES (DEC 1991)

(a) In the event any work performed or materials furnished by the contractor under the Master Agreement prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the job order.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the job price. Failure to

agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this agreement.

(End of clause)

252.217–7014 Discharge of liens.

As prescribed in 217.7104(a), use the following clause:

DISCHARGE OF LIENS (DEC 1991)

(a) The Contractor shall immediately discharge, or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or material furnished under any job order under this agreement.

(b) If any lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

252.217–7015 Safety and health.

As prescribed in 217.7104(a), use the following clause:

SAFETY AND HEALTH (DEC 1991)

Nothing contained in the Master Agreement or any job order shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

252.217–7016 Plant protection.

As prescribed in 217.7104(a), use the following clause:

PLANT PROTECTION (DEC 1991)

(a) The Contractor shall provide, for the plant and work in process, reasonable safeguards against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, and fire.

(b) The Contractor shall also provide whatever additional safeguards are necessary to protect the plant and work in process from espionage, sabotage, and enemy action.

(1) The Government shall reimburse the Contractor for that portion of the costs of the additional safeguards that is allocable to the contract in the same manner as if the Contracting Officer had issued a change order for the additional safeguards.

(2) The costs reimbursed shall not include any overhead allowance, unless the overhead is incident to the construction or installation of necessary security devices or equipment.

(c) Upon payment by the Government of the cost of any device or equipment required or approved under paragraph (b) of this clause, title shall vest in the Government.

(1) The Contractor shall comply with the instructions of the Contracting Officer concerning its identification and disposition.

(2) No such device or equipment shall become a fixture as a result of its being affixed to realty not owned by the Government.

(End of clause)

252.217–7017—252.217–7025 [Reserved]

252.217–7026 Identification of sources of supply.

As prescribed in 217.7303, use the following provision:

IDENTIFICATION OF SOURCES OF SUPPLY (NOV 1995)

(a) The Government is required under 10 U.S.C. 2384 to obtain certain information on the actual manufacturer or sources of supplies it acquires.

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

TABLE

Line items	National stock No.	Commercial item (Y or N)	Source of supply			Actual mfg?
			Company	Address	Part No.	
(1)	(2)	(3)	(4)	(4)	(5)	(6)
_____	_____	_____	_____	_____	_____	_____

(1) List each deliverable item of supply and item of technical data.
(2) If there is no national stock number, list "none."
(3) Use "Y" if the item is a commercial item; otherwise use "N." If "Y" is listed, the Offeror need not complete the remaining columns in the table.
(4) For items of supply, list all sources. For technical data, list the source.
(5) For items of supply, list each source's part number for the item.
(6) Use "Y" if the source of supply is the actual manufacturer; "N" if it is not; and "U" if unknown.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27675, May 27, 1994; 60 FR 61601, Nov. 30, 1995]

252.217–7027 Contract definitization.

As prescribed in 217.7406 (b), use the following clause:

CONTRACT DEFINITIZATION (DEC 2012)

(a) A _____(*insert specific type of contract action*) is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the underfinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____(*insert type of proposal; e.g., fixed-price or cost-and-fee*) proposal and certified cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is as follows (*insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and certified cost or pricing data).*

_____

_____

_____

_____

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this underfinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated _____ (*insert ''cost/price ceiling'' or ''firm-fixed price''*) in no event to exceed _____ (*insert the not-to-exceed amount).*

(End of clause)

[61 FR 7750, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996, as amended at 63 FR 55052, Oct. 14, 1998; 71 FR 27643, May 12, 2006; 74 FR 37650, July 29, 2009; 77 FR 76941, Dec. 31, 2012]

252.217–7028 Over and above work.

As prescribed in 217.7702, use a clause substantially as follows:

OVER AND ABOVE WORK (DEC 1991)

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

(1) *Over and above work* means work discovered during the course of performing overhaul, maintenance, and repair efforts that is—

(i) Within the general scope of the contract;

(ii) Not covered by the line item(s) for the basic work under the contract; and

(iii) Necessary in order to satisfactorily complete the contract.

(2) *Work request* means a document prepared by the Contractor which describes over and above work being proposed.

(b) The Contractor and Administrative Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of over and above work requests. If the parties cannot agree upon the procedures, the Administrative Contracting Officer has the unilateral right to direct the over and above work procedures to be followed. These procedures shall, as a minimum, cover—

(1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;

(2) Government review, verification, and authorization of the work; and

(3) Proposal pricing, submission, negotiation, and definitization.

(c) Upon discovery of the need for over and above work, the Contractor shall prepare and furnish to the Government a work request in accordance with the agreed-to procedures.

(d) The Government shall—

(1) Promptly review the work request;

(2) Verify that the proposed work is required and not covered under the basic contract line item(s);

(3) Verify that the proposed corrective action is appropriate; and

(4) Authorize over and above work as necessary.

(e) The Contractor shall promptly submit to the Contracting Officer, a proposal for the over and above work. The Government and Contractor will then negotiate a settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

(f) Failure to agree on the price of over and above work shall be a dispute within the meaning of the Disputes clause of this contract.

(End of clause)

252.219–7000—252.219–7002 [Reserved]

252.219–7003 Small business subcontracting plan (DoD contracts).

As prescribed in 219.708(b)(1)(A)*(1)*, use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (AUG 2012)

This clause supplements the Federal Acquisition Regulation 52.219–9, Small Business Subcontracting Plan, clause of this contract.

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

Historically black colleges and universities means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

Summary Subcontract Report (SSR) Coordinator means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Except for company or division-wide commercial items subcontracting plans, the term ''small disadvantaged business,'' when used in the FAR 52.219–9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219–9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian Tribe or a Tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 46– 8502–8504), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101–510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Public Law 101–510.

(f) The master plan is approved by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(h)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor's individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (h)(1)(i) of this clause.

(ii) Except as provided in (h)(2)(iii), the authority to acknowledge receipt or reject

SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor's individual subcontracting plans.

(iii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

(iv) The authority to acknowledge receipt or reject the Year-End Supplementary Report for Small Disadvantaged Businesses resides with the SSR Coordinator who acknowledges receipt or rejects the SSR.

(v) If the Contractor submits the Small Disadvantaged Business Participation report using eSRS, the authority to acknowledge receipt or reject this report in eSRS resides with the contracting officer who acknowledges receipt or rejects the ISR.

(End of clause)

Alternate I (OCT 2010) As prescribed in *219.708*(b)(1)(A)*(2)*, substitute the following paragraph (h)(1)(i) for paragraph (h)(1)(i) in the basic clause:

(h)(1)(i) The Standard Form 294 Subcontracting Report for Individual Contracts shall be submitted in accordance with the instructions on that form; paragraph (h)(2)(i) is inapplicable.

[75 FR 65440, Oct. 25, 2010, as amended at 76 FR 58138, Sept. 20, 2011; 77 FR 35882, June 15, 2012; 77 FR 52254, Aug. 29, 2012]]

252.219–7004 Small business subcontracting plan (test program).

As prescribed in 219.708(b)(1)(B), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JAN 2011)

(a) Definitions.

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, Web-based system for small business subcontracting program reporting. The eSRS is located at *http://www.esrs.gov*.

Subcontract, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Contractor's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of section 834 of Pub. L. 101–189, as amended, shall be included in and made a part of this contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of section 211 of Public Law 95–507.

(c) The Contractor shall—

(1) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS).

(2) Provide its contract number, its DUNS number, and the e-mail address of the Contractor's official responsible for acknowledging or rejecting the ISR to all first-tier subcontractors, who will be required to submit ISRs, so they can enter this information into the eSRS when submitting their reports.

(3) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging or rejecting the ISRs to its subcontractors with subcontracting plans who will be required to submit ISRs.

(4) Acknowledge receipt or reject all ISRs submitted by its subcontractors using eSRS.

(d) The Contractor shall submit SSRs using eSRS at *http://www.esrs.gov*. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower-tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from a member firm of the Alaska Native Corporations or an Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(1) This report may be submitted on a corporate, company, or subdivision (*e.g.*, plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(2) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(3) The report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(4) The authority to receipt or reject the SSR resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(e) All reports submitted at the close of each fiscal year shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. The authority to acknowledge receipt or reject the year-end report resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(f) The failure of the Contractor or subcontractor to comply in good faith with the clause of this contract entitled ''Utilization of Small Business Concerns,'' or an approved plan required by this clause, shall be a material breach of the contract.

(g) The Contractor shall include, in contracts that offer subcontracting possibilities, are expected to exceed $650,000 ($1.5 million for construction of any public facility), and are required to include the clause at 52.219–8, Utilization of Small Business Concerns—

(1) FAR 52.219–9, Small Business Subcontracting Plan, and 252.219–7003 Small Business Subcontracting Plan (DoD Contracts), when the Contracting Officer has included these clauses in the contract for purposes of flowdown to subcontractors, or

(2) 52.219–9, Small Business Subcontracting Plan, with its Alternate III, and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), with its Alternate I, when the Contracting Officer has included these clauses in the contract for flowdown to subcontractors to allow for submission of SF 294s in lieu of ISRs, or

(3) 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the test program described in DFARS 219.702.

(End of clause)

[76 FR 3537, Jan. 20, 2011]

252.219–7005—252.219–7008 [Reserved]

252.219–7009 Section 8(a) direct award.

As prescribed in 219.811–3(1), use the following clause:

SECTION 8(a) DIRECT AWARD (SEP 2007)

(a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Partnership Agreement dated between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is:

_____

_____

_____

_____

[*To be completed by the Contracting Officer at the time of award*]

(b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.

(c) The 8(a) Contractor agrees that—

(1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100–656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and

(2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

[63 FR 33588, June 19, 1998, as amended at 67 FR 11437, Mar. 14, 2002; 72 FR 51188, Sept. 6, 2007]

252.219–7010 Alternate A.

ALTERNATE A (JUN 1998)

As prescribed in 219.811–3(2), substitute the following paragraph (c) for paragraph (c) of the clause at FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

[63 FR 33588, June 19, 1998]

252.219–7011 Notification to delay performance.

As prescribed in 219.811-3 (3), use the following clause:

NOTIFICATION TO DELAY PERFORMANCE (JUN 1998)

The Contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the Contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered canceled.

(End of clause)

[63 FR 33588, June 19, 1998]

252.222–7000 Restrictions on employment of personnel.

As prescribed in 222.7004, use the following clause:

RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (MAR 2000)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in _____, individuals who are residents thereof and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract.

(End of clause)

[65 FR 14403, Mar. 16, 2000]

252.222–7001 Right of first refusal of employment—Closure of military installations.

As prescribed in 222.7102, use the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT—CLOSURE OF MILITARY INSTALLATIONS (APR 1992)

(a) The Contractor shall give Government employees, who have been or will be adversely affected by the closure of the military installation where this contract will be performed, the right of first refusal for employment openings under the contract. This right applies to positions for which the employee is qualified, if consistent with post-Government employment conflict of interest standards.

(b) Government personnel seeking preference under this clause shall provide the Contractor with evidence from the Government personnel office.

(End of clause)

[57 FR 52594, Nov. 4, 1992, as amended at 58 FR 28472, May 13, 1993]

252.222–7002 Compliance with local labor laws (overseas).

As prescribed in 222.7201(a), use the following clause:

COMPLIANCE WITH LOCAL LABOR LAWS (OVERSEAS) (JUN 1997)

(a) The Contractor shall comply with all—

(1) Local laws, regulations, and labor union agreements governing work hours; and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor's obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with paragraphs 31.205–15(a) and 31.205–47(d) of the Federal Acquisition Regulation, the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting officer.

(End of clause)

[62 FR 34129, June 24, 1997]

252.222–7003 Permit from Italian Inspectorate of Labor.

As prescribed in 222.7201(b), use the following clause:

PERMIT FROM ITALIAN INSPECTORATE OF LABOR (JUN 1997)

Prior to the date set for commencement of work and services under this contract, the Contractor shall obtain the prescribed permit from the Inspectorate of Labor having jurisdiction over the work site, in accordance with Article 5g of Italian Law Number 1369, dated October 23, 1960. The Contractor shall ensure that a copy of the permit is available at all reasonable times for inspection by the Contracting Officer or an authorized representative. Failure to obtain such permit may result in termination of the contract for the convenience of the United States Government, at no cost to the United States Government.

(End of clause)

[62 FR 34129, June 24, 1997]

252.222–7004 Compliance with Spanish social security laws and regulations.

As prescribed in 222.7201(c), use the following clause:

COMPLIANCE WITH SPANISH SOCIAL SECURITY LAWS AND REGULATIONS (JUN 1997)

(a) The Contractor shall comply with all Spanish Government social security laws and regulations. Within 30 calendar days after the start of contract performance, the Contractor shall ensure that copies of the documents identified in paragraph (a)(1) through (a)(5) of this clause are available at all reasonable times for inspection by the Contracting Officer or an authorized representative. The Contractor shall retain the records in accordance with the Audit and Records clause of this contract.

(1) TC1—Certificate of Social Security Payments;

(2) TC2—List of Employees;

(3) TC2/1—Certificate of Social Security Payments for Trainees;

(4) Nominal (pay statements) signed by both the employee and the Contractor; and

(5) Informa de Situacion de Empressa (Report of the Condition of the Enterprise) from the Ministerio de Trabajo y S.S., Tesoreria General de la Seguridad Social (annotated with the pertinent contract number(s) next to the employee's name).

(b) All TC1's, TC2's, and TC2/1's shall contain a representation that they have been paid by either the Social Security Administration office or the Contractor's bank or savings institution. Failure by the Contractor to comply with the requirements of this clause may result in termination of the contract under the clause of the contract entitled ''Default.''

(End of clause)

[62 FR 34129, June 24, 1997]

252.222–7005 Prohibition on use of nonimmigrant aliens—Guam.

As prescribed in 222.7302, use the following clause:

PROHIBITION ON USE OF NONIMMIGRANT ALIENS—GUAM (SEP 1999)

The work required by this contract shall not be performed by any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)). This prohibition does not apply to the performance of work by lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(End of clause)

[64 FR 52673, Sept. 30, 1999, as amended at 72 FR 20764, Apr. 26, 2007]

252.222–7006 Restrictions on the Use of Mandatory Arbitration Agreements.

As prescribed in 222.7405, use the following clause:

RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010)

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

Covered subcontractor means any entity that has a subcontract valued in excess of $1 million, except a subcontract for the acquisition of commercial items, including commercially available off-the-shelf items.

Subcontract means any contract, as defined in Federal Acquisition Regulation subpart 2.1, to furnish supplies or services for performance of this contract or a higher-tier subcontract thereunder.

(b) The Contractor—

(1) Agrees not to—

(i) Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration—

(A) Any claim under title VII of the Civil Rights Act of 1964; or

(B) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(ii) Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration—

(A) Any claim under title VII of the Civil Rights Act of 1964; or

(B) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; and

(2) Certifies, by signature of the contract, that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any existing agreements, as described in paragraph (b)(1) of this clause, with respect to any employee or independent contractor performing work related to such subcontract.

(c) The prohibitions of this clause do not apply with respect to a contractor's or subcontractor's agreements with employees or independent contractors that may not be enforced in a court of the United States.

(d) The Secretary of Defense may waive the applicability of the restrictions of paragraph (b) of this clause in accordance with Defense Federal Acquisition Regulation Supplement 222.7404.

(End of clause)

[75 FR 27948, May 19, 2010, as amended at 75 FR 40717, July 13, 2010; 75 FR 76297, Dec. 8, 2010]

252.223–7000 [Reserved]

252.223–7001 Hazard warning labels.

As prescribed in 223.303, use the following clause:

HAZARD WARNING LABELS (DEC 1991)

(a) ''Hazardous material,'' as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 *et seq*). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b) (1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

Material (if none, insert "none.")	Act
_____	_____
_____	_____

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223–7002 Safety precautions for ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994)

(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 the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26–M, 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)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27675, May 27, 1994]

252.223–7003 Change in place of performance—ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

CHANGE IN PLACE OF PERFORMANCE—AMMUNITION AND EXPLOSIVES (DEC 1991)

(a) The Offeror shall identify, in the ''Place of Performance'' provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223–7004 Drug-free work force.

As prescribed in 223.570–2, use the following clause:

DRUG-FREE WORK FORCE (SEP 1988)

(a) *Definitions.* (1) *Employee in a sensitive position,* as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) *Illegal drugs,* as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that title. The term ''illegal drugs'' does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

[57 FR 32737, July 23, 1992, as amended at 70 FR 73151, Dec. 9, 2005]

252.223–7005 [Reserved]

252.223–7006 Prohibition on storage and disposal of toxic and hazardous materials.

As prescribed in 223.7103(a), use the following clause:

PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 2012)

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

(1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) *Toxic or hazardous materials* means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(End of clause)

Alternate I (NOV 1995). As prescribed in 223.7103(b), add the following paragraphs (c) and (d) to the basic clause:

(c) With respect to treatment or disposal authorized pursuant to 10 U.S.C. 2692(b)(9), and notwithstanding any other provision of the contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor's treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation.

(d) The Contractor shall include this clause, including this paragraph (d), in each subcontract which requires, may require, or permits a subcontractor to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.

[58 FR 28472, May 13, 1993, as amended at 60 FR 13076, Mar. 10, 1995; 60 FR 61601, Nov. 30, 1995; 77 FR 23632, Apr. 20, 2012]

252.223–7007 Safeguarding sensitive conventional arms, ammunition, and explosives.

As prescribed in 223.7203, use the following clause:

SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)

(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 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76–M 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

(c) The Contractor shall comply with the requirements of DoD 5100.76–M, as specified in the statement of work. The edition of DoD 5100.76–M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Security Service (DSS), 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 DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) 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)

[61 FR 7750, Feb. 29, 1996, as amended at 64 FR 51077, Sept. 21, 1999]

252.223–7008 Prohibition of Hexavalent Chromium.

As prescribed in 223.7306, use the following clause:

PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013)

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

Homogeneous material means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate. *Mechanically disjointed* means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) *Prohibition.* (1) Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that—

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for commercial items, that are for supplies,, maintenance and repair services, or construction materials.

(End of clause)

[76 FR 25576, May 5, 2011, as amended at 78 FR 37990, June 25, 2013]

252.225–7000 Buy American Act—Buy American Statute—Balance of Payments Program Certificate.

As prescribed in 225.1101(1)(i), use the following provision:

BUY AMERICAN —BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JUN 2012)

(a) *Definitions.* ''Commercially available off-the-shelf (COTS) item,'' ''component,'' ''domestic end product,'' ''foreign end product,'' ''qualifying country,'' ''qualifying country end product,'' and ''United States'' have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.* (1) For all line items subject to the Buy American and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraph (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

_____
(Line Item Number)

_____
(Country of Origin)

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of ''domestic end product'':

_____
(Line Item Number)

_____
(Country of Origin (If known))

(End of provision)

Alternate I (DEC 2010) As prescribed in 225.1101(1)(ii), add the terms ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' in paragraph (a) and replace the phrase ''qualifying country end products'' in paragraphs (b)(2) and (c)(2) with the phrase ''qualifying country end products or SC/CASA state end products.''

[68 FR 15634, Mar. 31, 2003; 68 FR 25088, May 9, 2003, as amended at 70 FR 35546, June 21, 2005; 74 FR 2423, Jan. 15, 2009; 74 FR 68384, Dec. 24, 2009; 75 FR 81918, Dec. 29, 2010; 77 FR 35882, June 15, 2012]

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2)(i), use the following clause:

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (DEC 2012)

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

Commercially available off-the-shelf (COTS) item—

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

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

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

(C) 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

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Luxembourg
Austria	Netherlands
Belgium	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Spain
Egypt	Sweden
Finland	Switzerland
France	Turkey
Germany	United Kingdom of Great Britain and Northern Ireland.
Greece	
Israel	
Italy	

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see section 12.505(a)(1) of the Federal Acquisition Regulation). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American —Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I (OCT 2011). As prescribed in 225.1101(2)(ii), add the following definitions to paragraph (a) and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(a) ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

''South Caucasus/Central and South Asian (SC/CASA) state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end product, the Contractor shall deliver a qualifying country end product an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

[68 FR 15634, Mar. 31, 2003, as amended at 70 FR 35546, June 21, 2005; 74 FR 2423, Jan. 15, 2009; 75 FR 81918, Dec. 29, 2010; 76 FR 58138, Sept. 20, 2011; 77 FR 35882, June 15, 2012; 77 FR 76942, Dec. 31, 2012]

EDITORIAL NOTE: At 77 FR 35882, June 15, 2012, 252.225–7001 was amended by revising the section heading; however, the amendment could not be incorporated because there was no text for the revision.

252.225–7002 Qualifying country sources as subcontractors.

As prescribed in 225.1101(3), use the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC 2012)

(a) *Definition. Qualifying country,* as used in this clause, means a country with a reciprocal defense procurement memorandum of understanding or international agreement

with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Luxembourg
Austria	Netherlands
Belgium	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Spain
Egypt	Sweden
Finland	Switzerland
France	Turkey
Germany	United Kingdom of Great Britain and Northern Ireland
Greece	
Israel	
Italy	

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

[68 FR 15634, Mar. 31, 2003, as amended at 77 FR 38737, June 29, 2012; 77 FR 76942, Dec. 31, 2012]

252.225–7003 Report of intended performance outside the United States and Canada—Submission with offer.

As prescribed in 225.7204(a), use the following provision:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (OCT 2010)

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

(b) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds $12.5 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $650,000 in value; and

(ii) Could be performed inside the United States or Canada.

(c) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(d) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(e) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm*.

(End of provision)

[70 FR 20839, Apr. 22, 2005, as amended at 70 FR 35546, June 21, 2005; 71 FR 75893, Dec. 19, 2006; 75 FR 45074, Aug. 2, 2010]

252.225–7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.

As prescribed in 225.7204(b), use the following clause:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (OCT 2010)

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

(b) *Reporting requirement*. The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds $650,000 in value; and

(2) Could be performed inside the United States or Canada.

(c) *Submission of reports*. The Contractor—

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC), Washington, DC 20301–3060.

(d) *Report format*. The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm*.

(End of clause)

[70 FR 20839, Apr. 22, 2005, as amended at 70 FR 35546, June 21, 2005; 71 FR 75893, Dec. 19, 2006; 72 FR 30278, May 31, 2007; 75 FR 45074, Aug. 2, 2010]

252.225–7005 Identification of expenditures in the United States.

As prescribed in 225.1103(1), use the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (JUN 2005)

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

(b) This clause applies only if the Contractor is—

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(c) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.

(d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

[67 FR 20695, Apr. 26, 2002, as amended at 70 FR 35546, June 21, 2005]

252.225–7006 Quarterly reporting of actual contract performance outside the United States.

As prescribed in 225.7204(c), use the following clause:

QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (OCT 2010)

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

(b) *Reporting requirement*. Except as provided in paragraph (c) of this clause, within 10 days after the end of each quarter of the Government's fiscal year, the Contractor shall report any subcontract, purchase, or intracompany transfer that—

(1) Will be or has been performed outside the United States;

(2) Exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(3) Has not been identified in a report for a previous quarter.

(c) *Exception*. Reporting under this clause is not required if—

(1) A foreign place of performance is the principal place of performance of the contract; and

(2) The Contractor specified the foreign place of performance in its offer.

(d) *Submission of reports*. The Contractor shall submit the reports required by this clause to: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC), Washington, DC 20301–3060.

(e) *Report format*. The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm*.

(f) *Subcontracts*. The Contractor—

(1) Shall include the substance of this clause in all first-tier subcontracts exceeding $650,000, except those for commercial

items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence;

(2) Shall provide the number of this contract to its subcontractors required to submit reports under this clause; and

(3) Shall require the subcontractor, with respect to performance of its subcontract, to comply with the requirements directed to the Contractor in paragraphs (b) through (e) of this clause.

(End of clause)

[70 FR 20840, Apr. 22, 2005, as amended at 70 FR 35546, June 21, 2005; 71 FR 75893, Dec. 19, 2004; 72 FR 30278, May 31, 2007; 75 FR 45074, Aug. 2, 2010]

252.225–7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies.

As prescribed in 225.1103(4), use the following clause:

PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (SEP 2006)

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

Communist Chinese military company means any entity that is—

(1) A part of the commercial or defense industrial base of the People's Republic of China; or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

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

(b) Any supplies or services covered by the United States Munitions 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.

(End of clause)

[71 FR 53046, Sept. 8, 2006]

252.225–7008 Restriction on Acquisition of Specialty Metals.

As prescribed in 225.7003–5(a)(1), use the following clause:

RESTRICTION ON ACQUISITION OF SPECIALTY METALS (MAR 2013)

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

Alloy means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (*e.g.*, titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (*e.g.*, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

Produce means—

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

Specialty metal means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: Manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: Aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

Steel means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

(b) Any specialty metal delivered under this contract shall be melted or produced in the United States or its outlying areas.

(End of clause)

[74 FR 37639, July 29, 2009, as amended at 78 FR 18879, Mar. 28, 2013]

252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

As prescribed in 225.7003–5(a)(2), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JUN 2013)

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

Alloy means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that

the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g., nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

Assembly means an item forming a portion of a system or subsystem that—

(i) Can be provisioned and replaced as an entity; and

(ii) Incorporates multiple, replaceable parts.

Commercial derivative military article means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

Commercially available off-the-shelf item—

(i) Means any item of supply that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

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

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

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means any item supplied to the Government as part of an end item or of another component.

Electronic component means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component, and does not include any high performance magnets that may be used in the electronic component.

End item means the final production product when assembled or completed and ready for delivery under a line item of this contract.

High performance magnet means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

Produce means—

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

Qualifying country means any country listed in the definition of ''Qualifying country'' at 225.003 of the Defense Federal Acquisition Regulation Supplement (DFARS).

Required form means in the form of mill product, such as bar, billet, wire, slab, plate, or sheet, and in the grade appropriate for the production of—

(i) A finished end item to be delivered to the Government under this contract; or

(ii) A finished component assembled into an end item to be delivered to the Government under this contract.

Specialty metal means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: Manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: Aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

Steel means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

Subsystem means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(b) *Restriction*. Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country.

(c) *Exceptions*. The restriction in paragraph (b) of this clause does not apply to—

(1) Electronic components.

(2)(i) Commercially available off-the-shelf (COTS) items, other than—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, or sheet, that have not been incorporated into COTS end items, subsystems, assemblies, or components;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless—

(*1*) The fasteners are incorporated into COTS end items, subsystems, assemblies, or components; or

(*2*) The fasteners qualify for the commercial item exception in paragraph (c)(3) of this clause.

(ii) A COTS item is considered to be ''without modification'' if it is not modified prior to contractual acceptance by the next higher tier in the supply chain.

(A) Specialty metals in a COTS item that was accepted without modification by the next higher tier are excepted from the restriction in paragraph (b) of this clause, and remain excepted, even if a piece of the COTS item subsequently is removed (*e.g.*, the end is removed from a COTS screw or an extra hole is drilled in a COTS bracket).

(B) Specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, are subject to the restriction in paragraph (b) of this clause (*e.g.*, a special reinforced handle made of specialty metal is added to a COTS item).

(C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restriction in paragraph (b) of this clause (*e.g.*, a COTS aircraft is outfitted with a COTS engine that is not the COTS engine normally provided with the aircraft).

(D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is offered to the Government with an option that is not normally offered in the commercial marketplace, that option is subject to the restriction in paragraph (b) of this clause (*e.g.* An aircraft is normally sold to the public with an option for installation kits. The Department of Defense requests a military-unique kit. The aircraft is still a COTS item, but the military-unique kit is not a COTS item and must comply with the restriction in paragraph (b) of this clause unless another exception applies).

(3) Fasteners that are commercial items, if the manufacturer of the fasteners certifies it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(4) Items manufactured in a qualifying country.

(5) Specialty metals for which the Government has determined in accordance with DFARS 225.7003–3 that specialty metal melted or produced in the United States, its outlying areas, or a qualifying country cannot be acquired as and when needed in—

(i) A satisfactory quality;

(ii) A sufficient quantity; and

(iii) The required form.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in the end item, as estimated in good faith by the Contractor. This exception does not apply to high performance magnets containing specialty metals.

(d) *Compliance for commercial derivative military articles.* (1) As an alternative to the compliance required in paragraph (b) of this clause, the Contractor may purchase an amount of domestically melted or produced specialty metals in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, if—

(i) The Contracting Officer has notified the Contractor of the items to be delivered under this contract that have been determined by the Government to meet the definition of ''commercial derivative military article''; and

(ii) For each item that has been determined by the Government to meet the definition of ''commercial derivative military article,'' the Contractor has certified, as specified in the provision of the solicitation entitled ''Commercial Derivative Military Article—Specialty Metals Compliance Certificate'' (DFARS 252.225–7010), that the Contractor and its subcontractor(s) will enter into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of—

(A) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(B) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this alternative, the amount of specialty metal that is required to carry out production of the commercial derivative military article includes specialty metal contained in any item, including COTS items.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause in subcontracts, including subcontracts for commercial items, that are for items containing specialty metals, to the extent necessary to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting the substance of this clause in subcontracts, the Contractor shall—

(1) Modify paragraph (c)(6) of this clause as necessary to facilitate management of the minimal content exception;

(2) Exclude paragraph (d) of this clause; and

(3) Include this paragraph (e).

(End of clause)

[74 FR 37639, July 29, 2009, as amended at 76 FR 3538, Jan. 20, 2011; 77 FR 35882, June 15, 2012; 78 FR 18879, Mar. 28, 2013; 78 FR 37990, June 25, 2013]

252.225–7010 Commercial Derivative Military Article—Specialty Metals Compliance Certificate.

As prescribed in 225.7003–5(b), use the following provision:

COMMERCIAL DERIVATIVE MILITARY ARTICLE—SPECIALTY METALS COMPLIANCE CERTIFICATE (JUL 2009)

(a) *Definitions*. *Commercial derivative military article, commercially available off-the-shelf item, produce, required form,* and *specialty metal*, as used in this provision, have the meanings given in the clause of this solicitation entitled ''Restriction on Acquisition of Certain Articles Containing Specialty Metals'' (DFARS 252.225–7009).

(b) The offeror shall list in this paragraph any commercial derivative military articles it intends to deliver under any contract resulting from this solicitation using the alternative compliance for commercial derivative military articles, as specified in paragraph (d) of the clause of this solicitation entitled ''Restriction on Acquisition of Certain Articles Containing Specialty Metals'' (DFARS 252.225–7009). The offeror's designation of an item as a ''commercial derivative military article'' will be subject to Government review and approval.

(c) If the offeror has listed any commercial derivative military articles in paragraph (b) of this provision, the offeror certifies that, if awarded a contract as a result of this solicitation, and if the Government approves the designation of the listed item(s) as commercial derivative military articles, the offeror and its subcontractor(s) will demonstrate that individually or collectively they have entered into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of—

(1) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(2) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(d) For the purposes of this provision, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military articles.

(End of provision)

[74 FR 37639, July 29, 2009]

252.225–7011 Restriction on acquisition of supercomputers.

As prescribed in 225.7012–3, use the following clause:

RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (JUN 2005)

Supercomputers delivered under this contract shall be manufactured in the United States or its outlying areas.

(End of clause)

[70 FR 35547, June 21, 2005]

252.225–7012 Preference for certain domestic commodities.

As prescribed in 225.7002–3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (FEB 2013)

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

Component means any item supplied to the Government as part of an end product or of another component.

End product means supplies delivered under a line item of this contract.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Luxembourg
Austria	Netherlands
Belgium	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Spain
Egypt	Sweden
Finland	Switzerland
France	Turkey
Germany	United Kingdom of Great Britain and Northern Ireland.
Greece	
Israel	
Italy	

Structural component of a tent—

(i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);

(ii) Does not include equipment such as heating, cooling, or lighting.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-flag vessel means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/ tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

[67 FR 20698, Apr. 26, 2002, as amended at 68 FR 7442, Feb. 14, 2003; 69 FR 26509, May 13, 2004; 69 FR 31910, June 8, 2004; 72 FR 2638, Jan. 22, 2007; 73 FR 11356, Mar. 3, 2008; 73 FR 76971, Dec. 18, 2008; 75 FR 34945, June 21, 2010; 77 FR 38736, 38737, June 29, 2012; 77 FR 76942, Dec. 31, 2012; 78 FR 13546, Feb. 28, 2013]

252.225–7013 Duty-free entry.

As prescribed in 225.1101(4), use the following clause:

DUTY-FREE ENTRY (JUN 2012)

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

''Component'' means any item supplied to the Government as part of an end product or of another component.

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

Eligible product means—

(i) *Designated country end product* as defined in the Trade Agreements clause of this contract;

(ii) *Free Trade Agreement country end product*, other than a *Bahrainian end product*, a *Moroccan end product*, or a *Peruvian end product*, as defined in the Buy American-Free Trade Agreements-Balance of Payments Program clause of this contract; or

(iii) *Canadian end product* as defined in Alternate I of the Buy American -Free Trade Agreements-Balance of Payments Program clause of this contract.

Qualifying country and *qualifying country end product* have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American —Free Trade Agreements—Balance of Payments Program clause of this contract.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.-made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $200 per shipment into the customs territory of the United States.

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv) (A) For direct shipments to a U.S. military installation, the notation: ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE-GNTF, 207 New York Avenue, Staten Island, New York, 10305–5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates.''

(B) If the shipment will be consigned to other than a military installation, *e.g.*, a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, *e.g.*, for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.* (1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the customs territory of the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE''; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of eligible products or qualifying country supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

[68 FR 15635, Mar. 31, 2003, as amended at 69 FR 1928, Jan. 13, 2004; 70 FR 2363, Jan. 13, 2005; 70 FR 35547, June 21, 2005; 71 FR 34835, June 16, 2006; 71 FR 58542, Oct. 4, 2006; 74 FR 68384, Dec. 24, 2009; 77 FR 35882, June 15, 2012]

252.225–7014 [Reserved]

252.225–7015 Restriction on acquisition of hand or measuring tools.

As prescribed in 225.7002–3(b), use the following clause:

RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS (JUN 2005)

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

[70 FR 35547, June 21, 2005, as amended at 74 FR 37641, July 29, 2009]

252.225–7016 Restriction on acquisition of ball and roller bearings.

As prescribed in 225.7009–5, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2011)

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

(1) *Bearing component* means the bearing element, retainer, inner race, or outer race.

(2) *Component,* other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) *End product* means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause—

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States, its outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009–4 of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

[75 FR 76300, Dec. 8, 2010, as amended at 76 FR 32843, June 6, 2011]

252.225–7017 Photovoltaic Devices.

As prescribed in 225.7017–4(a), use the following clause:

PHOTOVOLTAIC DEVICES (AUG 2013)

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

Bahrainian photovoltaic device means an article that—

(i) Is wholly manufactured in Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Bahrain.

Canadian photovoltaic device means an article that has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Canada.

Caribbean Basin country photovoltaic device means an article that—

(i) Is wholly manufactured in a Caribbean Basin country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

Designated country means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country photovoltaic device means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

Domestic photovoltaic device means a photovoltaic device manufactured in the United States.

Foreign photovoltaic device means a photovoltaic device other than a domestic photovoltaic device.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

Free Trade Agreement country photovoltaic device means an article that—

(i) Is wholly manufactured in a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.'' in its place.

Korean photovoltaic device means an article that—

(i) Is wholly manufactured in Korea (Republic of); or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Korea (Republic of).'' in its place.

Least developed country photovoltaic device means an article that—

(i) Is wholly manufactured in a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

Moroccan photovoltaic device means an article that—

(i) Is wholly manufactured in Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Morocco.

Panamanian photovoltaic device means an article that—

(i) Is wholly manufactured in Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Panama.

Peruvian photovoltaic device means an article that—

(i) Is wholly manufactured in Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Peru.

Photovoltaic device means a device that converts light directly into electricity through a solid-state, semiconductor process.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Luxembourg
Austria	Netherlands
Belgium	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Spain
Egypt	Sweden
Finland	Switzerland
France	Turkey
Germany	United Kingdom of Great Britain and Northern Ireland
Greece	
Israel	
Italy	

Qualifying country photovoltaic device means a photovoltaic device manufactured in a qualifying country.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-made photovoltaic device means a photovoltaic device that—

(i) Is manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

WTO GPA country photovoltaic device means an article that—

(i) Is wholly manufactured in a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) More than $3,000 but less than $25,000, then the Contractor shall utilize only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(2)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation;

(2) $25,000 or more but less than $77,494, then the Contractor shall utilize in the performance of this contract only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of Canadian or other foreign photovoltaic devices in paragraph (c)(3)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, the Contractor shall utilize a qualifying country photovoltaic device, a Canadian photovoltaic device, or, at the Contractor's option, a domestic photovoltaic device;

(3) $77,494 or more but less than $100,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device;

(4) $100,000 or more but less than $202,000, then the Contractor shall utilize under this

contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, Panamanian or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device; or

(5) $202,000 or more, then the Contractor shall utilize under this contract only U.S.-made, qualifying country, or designated country photovoltaic devices.

(End of clause)

[76 FR 78861, Dec. 20, 2011, as amended at 77 FR 13013, Mar. 5, 2012; 77 FR 30357, 30361, May 22, 2012; 77 FR 31537, May 29, 2012; 77 FR 38737, June 29, 2012; 77 FR 52254, Aug. 29, 2012; 77 FR 68700, Nov. 16, 2012; 77 FR 76942, Dec. 31, 2012; 78 FR 48334, Aug. 8, 2013; 78 FR 76995, Dec. 20, 2013]

EDITORIAL NOTE: At 78 FR 76995, Dec. 20, 2013, 252.225–7017 was amended by removing the clause date ''(OCT 2013)'' and adding ''(DEC 2013)'' in its place. As the amendatory instruction was in error, it could not be executed.

252.225–7018 Photovoltaic Devices—Certificate.

As prescribed in 225.7017–4(b), use the following provision:

PHOTOVOLTAIC DEVICES—CERTIFICATE (DEC 2013)

(a) *Definitions.* ''Bahrainian photovoltaic device,'' ''Canadian photovoltaic device,'' ''Caribbean Basin photovoltaic device,'' ''designated country,'' ''*designated country photovoltaic device*'' ''domestic photovoltaic device,'' ''foreign photovoltaic device,'' ''Free Trade Agreement country,'' ''Free Trade Agreement photovoltaic device,'' ''Korean photovoltaic device,'' ''least developed country photovoltaic device,'' ''Moroccan photovoltaic device,'' ''Panamanian photovoltaic device,'' ''Peruvian photovoltaic device,'' ''photovoltaic device,'' ''qualifying country,'' ''qualifying country photovoltaic device,'' ''United States,'' ''U.S.-made photovoltaic device,'' and ''WTO GPA country photovoltaic device'' have the meanings given in the Photovoltaic Devices clause of this solicitation.

(b) *Restrictions.* The following restrictions apply, depending on the estimated value of any photovoltaic devices to be utilized under a resultant contract:

(1) If more than $3,000 but less than $202,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d)(2)(ii), (d)(3)(ii) or (d)(4)(ii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If $202,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed.* If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds $25,000, the Offeror's certification that such photovoltaic device (e.g., solar panel) is a designated country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the Offeror shall request a determination from U.S. Customs and Border Protection. (See *http://www.cbp.gov/xp/cgov/trade/legal/rulings/.)*

(d) *Certification and identification of country of origin.* [*The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:*]

____ (1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value of $3,000 or less.

(2) If more than $3,000 but less than $25,000—

____ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a qualifying country photovoltaic device [*Offeror to specify country of origin* _____]; or

____ (ii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. [*Offeror to specify*

country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.]

(3) If $25,000 or more but less than $77,494—

____ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country photovoltaic device; or a Canadian photovoltaic device [*Offeror to specify country of origin*_____]; or

____ (ii) The foreign (other than qualifying country or Canadian) photovoltaic devices to be utilized in performance of the contract are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(4) If $77,494 or more but less than $100,000—

__(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) [*Offeror to specify country of origin*_____*]; or*

__(ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (c)(4)(i) of this provision) are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(5) If $100,000 or more but less than $202,000—

___(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) [*Offeror to specify country of origin*_____*]; or*

___(ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (c)(4)(i) of this provision) are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(6) If $203,000 or more—

____ The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a U.S.-made, qualifying country, or designated country photovoltaic device. [*Offeror to specify country of origin* _____.]

(End of provision)

[76 FR 78861, Dec. 20, 2011, as amended at 77 FR 13013, Mar. 5, 2012; 77 FR 30358, May 22, 2012; 77 FR 68701, Nov. 16, 2012; 78 FR 76995, Dec. 20, 2013]

252.225–7019 Restriction on acquisition of anchor and mooring chain.

As prescribed in 225.7007–3, use the following clause:

RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN (DEC 2009))

(a) *Definition.* ''Component,'' as used in this clause, means an article, material, or supply incorporated directly into an end product.

(b) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States or its outlying areas, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States or its outlying areas shall exceed 50 percent of the total cost of components.

(c) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (b) of this clause are not available to meet the contract delivery schedule.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

(End of clause)

[68 FR 15637, Mar. 31, 2003, as amended at 70 FR 35547, June 21, 2005; 74 FR 68384, Dec. 24, 2009]

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5)(i), use the following provision:

TRADE AGREEMENTS CERTIFICATE (JAN 2005)

(a) *Definitions. Designated country end product, nondesignated country end product, qualifying country end product,* and *U.S.-made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the

Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, or designated country end products unless—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(c) *Certification and identification of country of origin.* (1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, or designated country end product.

(2) The following supplies are other nondesignated country end products:

(*Line Item Number*) (*Country of Origin*)

(End of provision)

Alternate I (DEC 2010) As prescribed in 225.1101(5)(ii), substitute the following paragraphs (a), (b)(2), and (c) for paragraph (a), (b)(2), and (c) of the basic clause:

(a) *Definitions.* ''Designated country end product,'' ''nondesignated country end product,'' ''qualifying country end product,'' ''South Caucasus/Central and South Asian (SC/CASA) state,'' ''South Caucasus/Central and South Asian (SC/CASA) state end product,'' and ''U.S.-made end product'' have the meanings given in the Trade Agreements clause of this solicitation.

(b)(2) Will consider only offers of end products that are U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreement clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number) _____

(Country of Origin) _____

(ii) The following are other nondesignated country end products:

(Line Item Number) _____

(Country of Origin) _____

[70 FR 2363, Jan. 13, 2005, as amended at 75 FR 81919, Dec. 29, 2010]

252.225–7021 Trade agreements.

As prescribed in 225.1101(6)(i), use the following clause:

TRADE AGREEMENTS (AUG 2013)

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

Caribbean Basin country end product—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

Commercially available off-the-shelf (COTS) item. (i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

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

(C) 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

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Designated country means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country end product means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Free Trade Agreement country end product means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Least developed country end product means an article that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Nondesignated country end product means any end product that is not a U.S.-made end product or a designated country end product.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Luxembourg
Austria	Netherlands
Belgium	Norway
Canada	Poland
Denmark	Portugal
Egypt	Spain
Finland	Sweden
France	Switzerland
Germany	Turkey
Greece	United Kingdom of Great Britain and Northern Ireland
Israel	
Italy	

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-made end product means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

WTO GPA country end product means an article that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at *http://www.usitc.gov/tata/hts/bychapter/index.htm.* The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States-Caribbean Basin Trade Partnership Act.

(End of clause)

Alternate I [Reserved]

Alternate II (DEC 2010) As prescribed in 225.1101(6)(ii), add the following new definitions to paragraph (a), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d):

(a)(14) ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) ''South Caucasus/Central and South Asian (SC/CASA) state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such

opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

[68 FR 15637, Mar. 31, 2003]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting 252.225–7021, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

252.225–7022 [Reserved]

252.225–7023 Preference for Products or Services from Afghanistan.

As prescribed in 225.7703-*4*(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

(a) *Definitions*. ''Product from Afghanistan'' and ''service from Afghanistan,'' as used in this provision, are defined in the clause of this solicitation entitled ''Requirement for Products or Services from Afghanistan'' (DFARS 252.225–7024).

(b) *Representation*. The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Afghanistan or services from Afghanistan, except those listed in—

(1) Paragraph (c) of this provision; or

(2) Paragraph (c)(2) of the provision entitled ''Trade Agreements Certificate,'' if included in this solicitation.

(c) *Other products or services*. The following offered products or services are not products from Afghanistan or services from Afghanistan:

(*Line Item Number*) (*Country of Origin*)

(d) *Evaluation*. For the purpose of evaluating competitive offers, the Contracting Officer will increase by 50 percent the prices of offers of products or services that are not products or services from Afghanistan.

(End of provision)

[78 FR 59859, Sept. 30, 2013]

252.225–7024 Requirement for Products or Services from Afghanistan.

As prescribed in 225.7703-*4*(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

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

(1) ''Product from Afghanistan'' means a product that is mined, produced, or manufactured in Afghanistan.

(2) ''Service from Afghanistan'' means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract, unless, in its offer, it specified that it would provide products or services other than products from Afghanistan or services from Afghanistan.

(End of clause)

[78 FR 59859, Sept. 30, 2013]

252.225–7025 Restriction on acquisition of forgings.

As prescribed in 225.7102–4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (DEC 2009)

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

(1) Component means any item supplied to the Government as part of an end product or of another component.

(2) Domestic manufacture means manufactured in the United States, its outlying areas, or Canada.

(3) *Forging items* means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears ...	All greater than 120 inches in diameter.

(b) End products and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102–3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

[68 FR 15639, Mar. 31, 2003, as amended at 70 FR 35548, June 21, 2005; 71 FR 39005, July 11, 2006; 74 FR 68384, Dec. 24, 2009]

252.225–7026 Acquisition Restricted to Products or Services from Afghanistan.

As prescribed in 225.7703-*4*(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

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

(1) ''Product from Afghanistan'' means a product that is mined, produced, or manufactured in Afghanistan.

(2) ''Service from Afghanistan'' means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract.

(End of clause)

[78 FR 59859, Sept. 30, 2013]

252.225–7027 Restriction on contingent fees for foreign military sales.

As prescribed in 225.7307(a), use the following clause.

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (APR 2003)

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

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

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

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

(1) For sales to the Government(s) of _____, contingent fees in any amount.

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

(End of clause)

[68 FR 15639, Mar. 31, 2003, as amended at 70 FR 73156, Dec. 9, 2005]

252.225–7028 Exclusionary policies and practices of foreign governments.

As prescribed in 225.7307(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

[68 FR 15639, Mar. 31, 2003, as amended at 70 FR 73156, Dec. 9, 2005]

252.225–7029 Acquisition of Uniform Components for Afghan Military or Afghan National Police.

As prescribed in 225.7703–4(d), use the following clause:

ACQUISITION OF UNIFORM COMPONENTS FOR THE AFGHAN MILITARY OR THE AFGHAN NATIONAL POLICE (SEP 2013)

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

''Textile component'' means any item consisting of fibers, yarns, or fabric, supplied for incorporation into a uniform or a component of a uniform. It does not include items that do not contain fibers, yarns, or fabric, such as the metallic or plastic elements of buttons, zippers, or other clothing fasteners.

''United States'' means the 50 States, the District of Columbia, and outlying areas.

(b) As required by section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), the Contractor shall deliver under this contract only textile components that have been produced in the United States.

(c) There are no exceptions or waivers to this requirement.

(End of clause)

[78 FR 59859, Sept. 30, 2013]

252.225–7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7011–3, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (DEC 2006)

(a) Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(1) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(2)(i) Will be delivered to the Government for use in a Government-owned facility or a facility under the control of the Department of Defense; or

(ii) Will be purchased by the Contractor for use in a Government-owned facility or a facility under the control of the Department of Defense.

(b) This restriction—

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used ''as is'' or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (*e.g.*, a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

(End of clause)

[71 FR 75894, Dec. 19, 2006]

252.225–7031 Secondary Arab boycott of Israel.

As prescribed in 225.7605, use the following provision:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 2005)

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

(1) *Foreign person* means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) *United States* means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) *United States person* is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

[68 FR 15639, Mar. 31, 2003, as amended at 70 FR 35548, June 21, 2005; 71 FR 39006, July 11, 2006]

252.225–7032 Waiver of United Kingdom Levies—Evaluation of offers.

As prescribed in 225.1101(7), use the following provision:

WAIVER OF UNITED KINGDOM LEVIES—EVALUATION OF OFFERS (APR 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

[68 FR 15639, Mar. 31, 2003, as amended at 73 FR 53155, Sept. 15, 2008; 78 FR 59859, Sept. 30, 2013]

252.225–7033 Waiver of United Kingdom levies.

As prescribed in 225.1101(8), use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (APR 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

[68 FR 15639, Mar. 31, 2003, as amended at 73 FR 53155, Sept. 15, 2008; 78 FR 59859, Sept. 30, 2013]

252.225–7034 [Reserved]

252.225–7035 Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 225.1101(9)(i), use the following provision:

BUY AMERICAN —FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (NOV 2012)

(a) *Definitions.* ''Bahrainian end product,'' ''commercially available off-the-shelf (COTS) item,'' ''component,'' ''domestic end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''foreign end product,'' ''Moroccan end product,'' ''Panamanian end product,'' ''Peruvian end product,'' ''qualifying country end product,'' and ''United States,'' as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.* (1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

_____
(*Line Item Number*)

_____
(*Country of Origin*)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products or Peruvian end products:

_____
(*Line Item Number*)

_____
(*Country of Origin*)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of ''domestic end product'':

_____
(*Line Item Number*)

_____
(*Country of Origin* (If known))

Alternate I (NOV 2012) As prescribed in 225.1101(9)(ii), substitute the phrase

''Canadian end product'' for the phrases ''Bahrainian end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Moroccan end product,'' ''Panamanian end product,'' and ''Peruvian end products'' in paragraph (a) of the basic provision; substitute the phrase ''Canadian end products'' for the phrase ''Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products'' in paragraphs (b)(2) and (c)(2)(ii) of the basic provision; and delete the phrase ''Australian or'' from paragraph (c)(2)(i) of the basic provision.

Alternate II (NOV 2012) As prescribed in 225.1101(9)(iii), add the terms ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product'' in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

_____
(*Line Item Number*)

_____
(*Country of Origin*)

(End of provision)

Alternate III (JUN 2012) As prescribed in 225.1101(9)(iv), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions. Canadian end product, commercially available off-the-shelf (COTS) item, domestic end product, foreign end product, qualifying country end product, South Caucasus/Central and South Asian (SC/CASA) state end product,* and *United States* have the meanings given in the Buy American —Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number) _____
(Country of Origin) _____

(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number) _____
(Country of Origin) _____

Alternate IV (NOV 2012) As prescribed in 225.1101(9)(v), add a definition of ''Korean end product'' in paragraph (a) of the basic provision; substitute the phrase ''Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products'' for the phrase ''Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products'' in paragraphs (b)(2) and (c)(2)(ii) of the basic provision.

Alternate V (NOV 2012) As prescribed in 225.1101(9)(vi), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions.* ''Bahrainian end product,'' ''commercially available off-the-shelf (COTS) item,'' ''component,'' ''domestic end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''foreign end product,'' ''Korean end product,'' ''Moroccan end product,'' ''Panamanian end product,'' ''Peruvian end product,'' ''qualifying country end product,'' ''South Caucasus/Central and South Asian (SC/CASA) state end product,'' and ''United States,'' as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement end products other than Bahrainian end products, Korean end products, Moroccan end

products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

_____
(*Line Item Number*)

_____
(*Country of Origin*)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

_____
(*Line Item Number*)

_____
(*Country of Origin*)

[70 FR 2364, Jan. 13, 2005, as amended at 71 FR 34835, June 16, 2006; 71 FR 58543, Oct. 4, 2006; 73 FR 53156, Sept. 15, 2008; 74 FR 2423, Jan. 15, 2009; 74 FR 68384, Dec. 24, 2009; 75 FR 81919, Dec. 29, 2010; 76 FR 32843, June 6, 2011; 77 FR 30358, May 22, 2012; 77 FR 35882, June 15, 2012; 77 FR 68701, Nov. 16, 2012; 78 FR 59859, Sept. 30, 2013]

252.225–7036 Buy American—Free Trade Agreements—Balance of Payments Program.

As prescribed in 225.1101(10)(i)(A), use the following clause:

BUY AMERICAN —FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (DEC 2012)

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

Bahrainian end product means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Commercially available off-the-shelf (COTS) item—

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

(A) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

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

(C) 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

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means an article, material, or supply incorporated directly into an end product.

Domestic end product means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(*1*) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(*2*) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

End product means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

Free Trade Agreement country end product means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was

transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Moroccan end product means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Panamanian end product means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Peruvian end product means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

Qualifying country means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia	Luxembourg
Austria	Netherlands
Belgium	Norway
Canada	Poland
Czech Republic	Portugal
Denmark	Spain
Egypt	Sweden
Finland	Switzerland
France	Turkey
Germany	United Kingdom of Great Britain and Northern Ireland
Greece	
Israel	
Italy	

Qualifying country component means a component mined, produced, or manufactured in a qualifying country.

Qualifying country end product means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country

end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(End of clause)

Alternate I (JUN 2012) As prescribed in 225.1101(10)(i)(B), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a) *Canadian end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American —Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

Alternate II (NOV 2012) As prescribed in 225.1101(10)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a) ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

''South Caucasus/Central and South Asian (SC/CASA) state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

Alternate III (JUN 2012) As prescribed in 225.1101(10)(i)(B), add the following definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause,

(a) *Canadian end product,* means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

South Caucasus/Central and South Asian (SC/CASA) state end product means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor's option, a domestic end product.

Alternate IV (NOV 2012) As prescribed in 225.1101(10)(i)(C), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a) ''Korean end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

Alternate V (NOV 2012) As prescribed in 225.1101(10)(i)(C), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a) ''Korean end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

''South Caucasus/Central and South Asian (SC/CASA) state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying

country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

[68 FR 15640, Mar. 31, 2003, as amended at 69 FR 1929, Jan. 13, 2004; 69 FR 74992, Dec. 15, 2004; 70 FR 2365, Jan. 13, 2005; 70 FR 35548, June 21, 2005; 71 FR 34835, June 16, 2006; 71 FR 58543, Oct. 4, 2006; 72 FR 14243, Mar. 27, 2007; 73 FR 53156, Sept. 15, 2008; 74 FR 2423, Jan. 15, 2009; 74 FR 37642, 37651, July 29, 2009; 75 FR 81920, Dec. 29, 2010; 76 FR 61283, Oct. 4, 2011; 77 FR 30359, May 22, 2012; 77 FR 31537, May 29, 2012; 77 FR 35882, June 15, 2012; 77 FR 38737, June 29, 2012; 77 FR 43470, July 24, 2012; 77 FR 68702, Nov. 16, 2012; 77 FR 76942, Dec. 31, 2012; 78 FR 59859, Sept. 30, 2013]

252.225–7037 Evaluation of Offers for Air Circuit Breakers.

As prescribed in 225.7006–4(a), use the following provision:

EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS (JUN 2012)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of provision)

[70 FR 35548, June 21, 2005]

EDITORIAL NOTE: At 77 FR 35882, June 15, 2012, 252.225–7037 was amended in paragraph (e)(3), by removing ''the Contract Disputes Act of 1978 (41 U.S.C. 7101)'' and adding ''41 U.S.C. 7101, Contract Disputes'' in its place; and in paragraph (g)(2)(iv), removing ''Act'' and adding ''statute'' in its place; however, the amendment could not be incorporated because those paragraphs don't exist.

252.225–7038 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7006–4(b), use the following clause:

RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS (JUN 2005)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of clause)

[70 FR 35548, June 21, 2005]

EDITORIAL NOTE: At 77 FR 35882, June 15, 2012, 252.225–7038 was amended in paragraph (l)(2)(ii), by removing ''Act'' and adding ''statute'' in its place; however, the amendment could not be incorporated because (l)(2)(ii) doesn't exist.

252.225–7039 Contractors performing private security functions.

As prescribed in 225.370–6, insert the following clause:

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS (JUN 2013)

(a) *Definitions.*

Full cooperation—

(i) Means disclosure to the Government of the information sufficient to identify the nature and extent of the incident and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' requests for documents and access to employees with information;

(ii) Does not foreclose any Contractor rights arising in law, the FAR, the DFARS, or the terms of the contract. It does not require—

(A) The Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(B) 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

(C) Does not restrict the Contractor from—

(*1*) Conducting an internal investigation; or

(*2*) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Private security functions means the following activities engaged in by a contractor:

(i) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.

(ii) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(b) *Requirements.* The Contractor is required to—

(1) Ensure that the Contractor and all employees of the Contractor who are responsible for performing private security functions under this contract comply with any orders, directives, and instructions to Contractors performing private security functions that are identified in the contract for—

(i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions. This includes ensuring the issuance, maintenance, and return of Personal Identity Verification credentials in accordance with FAR 52.204–19, Personal Identity Verification of Contractor Personnel, and DoD procedures, including revocation of any physical and/or logistical access (as defined by Homeland Security Presidential Directive (HSPD–12)) granted to such personnel;

(ii) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;

(A) All weapons must be registered in the Synchronized Predeployment Operational Tracker (SPOT) materiel tracking system.

(B) In addition, all weapons that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211–7003, Item Identification and Valuation, and DFARS 252.245.7001, Tagging, Labeling, and Marking of Government-Furnished Property, and physically marked in accordance with MIL–STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD Item Unique Identification (IUID) Registry (*https://www.bpn.gov/iuid/*);

(iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by Contractors performing private security functions;

(A) All armored vehicles, helicopters, and other military vehicles must be registered in SPOT.

(B) In addition, all armored vehicles, helicopters, and other military vehicles that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211–7003 and DFARS 252.245.7001 and physically marked in accordance with MIL–STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD IUID Registry (*https://www.bpn.gov/iuid/*); and

(iv) Reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon, including laser optical distracters, acoustic hailing devices, electromuscular TASER guns, blunt-trauma devices like rubber balls and sponge grenades, and a variety of other riot control agents and delivery systems) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that the Contractor and all employees of the Contractor who are responsible for personnel performing private security functions under this contract are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by DoDI 3020.50, Humanitarian or Peace Operations, or Other Military Operations or Exercises, or Other Significant Operations, at *http://www.dtic.mil/whs/directives/corres/pdf;*

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable commander of a combatant command relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions; and

(3) Provide full cooperation with any Government-authorized investigation into incidents reported pursuant to paragraph (b)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions by providing access to employees performing private security functions and relevant information in the possession of the Contractor regarding the incident concerned.

(c) *Remedies.* In addition to other remedies available to the Government—

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove

and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default. Required Contractor actions include—

(i) Ensuring the return of personal identity verification credentials;

(ii) Ensuring the return of other equipment issued to the employee under the contract; and

(iii) Revocation of any physical and/or logistical access granted to such personnel;

(2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and may be considered in any responsibility determination or evaluation of past performance; and

(3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period; and

(4) If the performance failures are significant, severe, prolonged, or repeated, the contracting officer shall refer the contractor to the appropriate suspension and debarment official.

(d) *Rule of construction*. The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(e) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (e), in in all subcontracts, including subcontracts for commercial items, that will be performed outside the United States in areas of combat and other significant military operations designated by the Secretary of Defense, contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises designated by the Combatant Commander.

(End of clause)

[76 FR 52137, Aug. 19, 2011, as amended at 77 FR 35885, June 15, 2012; 78 FR 37990, June 25, 2013]

252.225–7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

As prescribed in 225.7402–5(a), use the following clause:

CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (FEB 2013)

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

Combatant Commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Designated operational area means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

Law of war means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

Subordinate joint force commander means a sub-unified commander or joint task force commander.

(b) *General*.

(1) This clause applies when Contractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations or military exercises, when designated by the Combatant Commander.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians accompanying the U.S. Armed Forces.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

(ii) Contractor personnel performing security functions are also authorized to use deadly force when such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in their contract or with their job description and terms of employment.

(iii) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.* (1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) The Contracting Officer shall include in the contract the level of protection to be provided to Contractor personnel.

(iii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, all Contractor personnel authorized to accompany the U.S. Armed Forces in the designated operational area are authorized to receive resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

(4) Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract.

(d) *Compliance with laws and regulations.* (1) The Contractor shall comply with, and shall ensure that its personnel authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that contractor employees accompanying U.S. Armed Forces are aware—

(i) Of the DoD definition of ''sexual assault'' in DoDD 6495.01, Sexual Assault Prevention and Response Program;

(ii) That many of the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws;

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at *http://www.cid.army.mil/reportacrime.html;*

(ii) Air Force Office of Special Investigations at *http://www.osi.andrews.af.mil/library/factsheets/factsheet.asp?id=14522;*

(iii) Navy Criminal Investigative Service at *http://www.ncis.navy.mil/Pages/publicdefault.aspx;*

(iv) Defense Criminal Investigative Service at *http://www.dodig.mil/HOTLINE/index.html;*

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800–424–9098 or *www.dodig.mil/HOTLINE/index.html.* Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(e) *Pre-deployment requirements.* (1) The Contractor shall ensure that the following requirements are met prior to deploying personnel authorized to accompany U.S. Armed Forces. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

(i) All required security and background checks are complete and acceptable.

(ii) All deploying personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. The Government will provide, at no cost to the Contractor, any theater-specific immunizations and/or medications not available to the general public.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center. Any Common Access Card issued to deploying personnel shall contain the access permissions allowed by the letter of authorization issued in accordance with paragraph (c)(4) of this clause.

(iv) Special area, country, and theater clearance is obtained for personnel. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54–G, DoD Foreign Clearance Guide. Contractor personnel are considered non-DoD personnel traveling under DoD sponsorship.

(v) All personnel have received personal security training. At a minimum, the training shall—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The basic training will be provided through—

(*1*) A military-run training center; or

(*2*) A Web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, *et seq.*);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) In time of declared war or a contingency operation, Contractor personnel authorized to accompany U.S. Armed Forces in the field are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(f) *Processing and departure points.* Deployed Contractor personnel shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to

deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel accountability, ensure that specific designated operational area entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.* (1) The Contractor shall enter before deployment and maintain data for all Contractor personnel that are authorized to accompany U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause. The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, at *http://www.dod.mil/bta/products/spot.html*, to enter and maintain the data.

(2) The Contractor shall ensure that all employees in the database have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official. The Contracting Officer will inform the Contractor of the Government official designated to receive this data card.

(h) *Contractor personnel.* (1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer upon request. The plan shall—

(i) Identify all personnel who are subject to military mobilization;

(ii) Detail how the position would be filled if the individual were mobilized; and

(iii) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(3) Contractor personnel shall report to the Combatant Commander or a designee, or through other channels such as the military police, a judge advocate, or an inspector general, any suspected or alleged conduct for which there is credible information that such conduct—

(i) Constitutes violation of the law of war; or

(ii) Occurred during any other military operations and would constitute a violation of the law of war if it occurred during an armed conflict.

(i) *Military clothing and protective equipment.* (1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.* (1) If the Contractor requests that its personnel performing in the designated operational area be authorized to carry weapons, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If the Contracting Officer, subject to the approval of the Combatant Commander, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize the Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The *[Contracting Officer to specify the appropriate individual, e.g., Contracting Officer's Representative, Regional Security Officer]* may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the designated operational area.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the designated operational area whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.* (1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.* (1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die while accompanying the U.S. Armed Forces will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the Combatant Commander.

(End of clause)

[73 FR 16775, Mar. 31, 2008, as amended at 74 FR 34265, July 15, 2009; 76 FR 36884, June 23, 2011; 76 FR 38052, June 29, 2011; 78 FR 13548, Feb. 28, 2013]

252.225–7041 Correspondence in English.

As prescribed in 225.1103(2), use the following clause:

CORRESPONDENCE IN ENGLISH (JUN 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

[62 FR 34132, June 24, 1997, as amended at 65 FR 19858, Apr. 13, 2000; 68 FR 15641, Mar. 31, 2003; 71 FR 39006, July 11, 2006]

252.225–7042 Authorization to perform.

As prescribed in 225.1103(3), use the following provision:

AUTHORIZATION TO PERFORM (APR 2003)

The offeror represents that it has been duly authorized to operate and to do business in the country or countries in which the contract is to be performed.

(End of provision)

[68 FR 15641, Mar. 31, 2003, as amended at 71 FR 39006, July 11, 2006]

252.225–7043 Antiterrorism/force protection policy for defense contractors outside the United States.

As prescribed in 225.7403–2, use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (MAR 2006)

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

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

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

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

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

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

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

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from [*Contracting Officer to insert applicable information cited in PGI 225.7403–1*].

(End of clause)

[63 FR 31937, June 11, 1998, as amended at 70 FR 23803, May 5, 2005; 70 FR 35548, June 21, 2005; 71 FR 14100, Mar. 21, 2006]

252.225–7044 Balance of Payments Program—Construction Material.

As prescribed in 225.7503(a)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (JUN 2012)

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

Commercially available off-the-shelf (COTS) item—

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

(i) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(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.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate ''none''*]

(End of clause)

Alternate I (DEC 2010) As prescribed in 225.7503(a)(2), add the following definitions to paragraph (a) and replace the phrase ''domestic construction material'' in the second sentence of paragraph (b) with the phrase ''domestic construction material or SC/CASA state construction material.''

''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

''SC/CASA state construction material'' means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

[67 FR 20695, Apr. 26, 2002, as amended at 70 FR 2365, Jan. 13, 2005; 70 FR 35548, June 21, 2005; 74 FR 2424, Jan. 15, 2009; 75 FR 66686, Oct. 29, 2010; 75 FR 81920, ≤Dec. 29, 2010; 77 FR 35882, June 15, 2012]

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

As prescribed in 225.7503(b)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (AUG 2013)

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

Caribbean Basin country construction material means a construction material that—-

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

Commercially available off-the-shelf (COTS) item—

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

(i) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(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 section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

Component means any article, material, or supply incorporated directly into construction material.

Construction material means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and

any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

Designated country means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

Domestic construction material means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

Free Trade Agreement country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States, the District of Columbia, and outlying areas.

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate ''none''*]

(End of clause)

Alternate I (DEC 2010) As prescribed in 225.7503(b)(2), add the following definition of ''Bahrainian or Mexican construction material'' to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

Bahrainian or Mexican construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''].

Alternate II (JUN 2011) As prescribed in 225.7503(b)(3), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

Alternate III (JUN 2011) As prescribed in 225.7503(b)(4), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

South Caucasus/Central and South Asian (SC/CASA) state means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

SC/CASA state construction material means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and

designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its Government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its Government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

[70 FR 2365, Jan. 13, 2005, as amended at 70 FR 35548, June 21, 2005; 70 FR 73153, Dec. 9, 2005; 71 FR 9271, Feb. 23, 2006; 71 FR 34836, June 16, 2006; 71 FR 58543, Oct. 4, 2006; 72 FR 14243, Mar. 27, 2007; 73 FR 70913, Nov. 24, 2008; 74 FR 2424, Jan. 15, 2009; 74 FR 37651, July 29, 2009; 74 FR 61046, Nov. 23, 2009; 75 FR 66686, Oct. 29, 2010; 75 FR 81921, Dec. 29, 2010; 76 FR 32843, June 6, 2011; 76 FR 38053, June 29, 2011; 77 FR 4632, Jan. 30, 2012; 77 FR 30359, 30361, May 22, 2012; 77 FR 31537, May 29, 2012; 77 FR 68704, Nov. 16, 2012; 78 FR 48334, Aug. 8, 2013]

252.225–7046 Exports by Approved Community Members in Response to the Solicitation.

As prescribed in *225.7902–5*(a), use the following provision:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN RESPONSE TO THE SOLICITATION (JUNE 2013)

(a) *Definitions.* The definitions of ''Approved Community'', ''defense articles'', ''Defense Trade Cooperation (DTC) Treaty'', ''export'', ''Implementing Arrangement'', ''qualifying defense articles'', ''transfer'', and ''U.S. DoD Treaty-eligible requirements'' in DFARS clause *252.225–7047* apply to this provision.

(b) All contract line items in the contemplated contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

_____

[*Enter Contract Line Item Number(s) or enter ''None''*]

(c) Approved Community members responding to the solicitation may only export or transfer defense articles that specifically respond to the stated requirements of the solicitation.

(d) Subject to the other terms and conditions of the solicitation and the contemplated contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in preparing a response to this solicitation.

(e) Any conduct by an offeror responding to this solicitation that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and the implementing regulations of the Department of State in 22 CFR 126.16 (Australia), 22 CFR 126.17 (United Kingdom), and 22 CFR 126 Supplement No. 1 (exempted technologies list) is subject to all applicable International Traffic in Arms Regulations (ITAR) requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR.

(f) If the offeror uses the procedures established pursuant to the DTC Treaties, the offeror agrees that, with regard to the export or transfer of a qualifying defense article associated with responding to the solicitation, the offeror shall—

(1) Comply with the requirements and provisions of the applicable DTC Treaties, the Implementing Arrangements, and corresponding regulations (including the ITAR) of the U.S. Government and the government of Australia or of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article—

(i) Mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, as applicable, including any criminal, civil, and administrative penalties or sanctions contained therein.

(g) *Representation*. The offeror shall check one of the following boxes and sign the representation:

☐ The offeror represents that export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation and that such export(s) or transfer(s) complied with the requirements of this provision.

Name/Title of Duly Authorized Representative Date

☐ The offeror represents that no export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation.

Name/Title of Duly Authorized Representative Date

(h) *Subcontracts*. The offeror shall flow down the substance of this provision, including this paragraph (h), but excluding the representation at paragraph (g), to any subcontractor at any tier intending to use the DTC Treaties in responding to this solicitation.

(End of provision)

[78 FR 36111, June 17, 2013]

252.225–7047 Exports by Approved Community Members in Performance of the Contract.

As prescribed in *225.7902–5*(b), use the following clause:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN PERFORMANCE OF THE CONTRACT (JUNE 2013)

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

''Approved Community'' means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

''Australia Community member'' means an Australian government authority or nongovernmental entity or facility on the Australia Community list accessible at *http://pmddtc.state.gov/treaties/index.html*.

''Defense articles'' means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of the International Traffic in Arms Regulations (ITAR), as modified or amended.

''Defense Trade Cooperation (DTC) Treaty'' means—

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007].

''Export'' means the initial movement of defense articles from the United States Community to the United Kingdom Community and the Australia Community.

''Implementing Arrangement'' means—

(1) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed on February 14, 2008; or

(2) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed on March 14, 2008.

''Qualifying defense articles'' means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

''Transfer'' means the movement of previously exported defense articles within the Approved Community.

''United Kingdom Community member'' means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at *http://pmddtc.state.gov*.

''United States Community'' means—

(1) Departments and agencies of the U.S. Government, including their personnel, with, as appropriate, security accreditation and a need-to-know; and

(2) Nongovernmental U.S. entities registered with the Department of State and eligible to export defense articles under U.S. law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

''U.S. DoD Treaty-eligible requirements'' means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support

program, or DoD end use, as described in Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

(b) All contract line items in this contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

[*Enter Contract Line Item Number(s) or enter ''None''*]

(c) Subject to the other terms and conditions of this contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in performance of the contract.

(d) Any conduct by the Contractor that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and 22 CFR 126.16(g) and 22 CFR 126.17(g) is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the DTC Treaties.

(e) If the Contractor is an Approved Community member, the Contractor agrees that—

(1) The Contractor shall comply with the requirements of the DTC Treaties, the Implementing Arrangements, the ITAR, and corresponding regulations of the U.S. Government and the government of Australia or the government of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article the Contractor—

(i) Shall mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Shall comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Shall acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may require exports or transfers of qualifying defense articles in connection with deliveries under the contract.

[78 FR 36112, June 17, 2013, as amended at 78 FR 38235, June 26, 2013]

252.225–7048 Export-Controlled Items.

As prescribed in *225.7901–4*, use the following clause:

EXPORT-CONTROLLED ITEMS (JUNE 2013)

(a) *Definition*. ''Export-controlled items,'' as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730–774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130). The term includes—

(1) ''Defense items,'' defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120; and

(2) ''Items,'' defined in the EAR as ''commodities'', ''software'', and ''technology,'' terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any

questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq.*);

(2) The Arms Export Control Act (22 U.S.C. 2751, *et seq.*);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*);

(4) The Export Administration Regulations (15 CFR Parts 730–774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120–130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

[78 FR 36113, June 17, 2013]

252.226–7000 Notice of historically black college or university and minority institution set-aside.

As prescribed in 226.370—9(a), use the following clause:

NOTICE OF HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION SET-ASIDE (APR 1994)

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) *General.* (1) Offers are solicited only from historically black colleges or universities and minority institutions.

(2) Any award resulting from this solicitation will be made only to an offeror which is a historically black college or university or a minority institution at the time of submission of its initial offer including price.

(c) *Agreements.* The offeror will—

(1) Perform at least 50 percent of the cost of contract performance incurred for personnel with its own employees; and

(2) Upon request by the Contracting Officer, provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994; 70 FR 73150, Dec. 9, 2005]

252.226–7001 Utilization of Indian organizations, Indian-owned economic enterprises, and native Hawaiian small business concerns.

As prescribed in 226.104, use the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)

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

Indian means—

(1) Any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c); and

(2) Any ''Native'' as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

Interested party means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

Native Hawaiian small business concern means an entity that is—

(1) A small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Contractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to—

(1) For matters relating to Indian organizations or Indian-owned economic enterprises: U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS–2626–MIB, Washington, DC 20240–4000. The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns: Department of Hawaiian Home Lands, PO Box 1879, Honolulu, HI 96805. The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made—

(1) While a challenge is pending; or

(2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Contractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Contractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Contractor requests and receives an incentive payment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the incentive amount.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding $500,000.

[68 FR 56562, Oct. 1, 2003, as amended at 69 FR 55991, Sept. 17, 2004]

252.227–7000 Non-estoppel.

As prescribed at 227.7009–1, insert the following clause in patent releases, license agreements, and assignments:

NON-ESTOPPEL (OCT 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227–7001 Release of past infringement.

As prescribed at 227.7009–2(a), insert the following clause in patent releases, license agreements, and assignments:

RELEASE OF PAST INFRINGEMENT (AUG 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter).*

*Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

(End of clause)

252.227–7002 Readjustment of payments.

As prescribed at 227.7009–2(b), insert the following clause in patent releases, license agreements, and assignments:

READJUSTMENT OF PAYMENTS (OCT 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as its arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; *Provided,* however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227–7003 Termination.

As prescribed at 227.7009–2(c), insert the following clause in patent releases, license agreements, and assignments:

TERMINATION (AUG 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227–7004 License grant.

As prescribed at 227.7009–3(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT (AUG 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____
Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227–7005 License term.

As prescribed at 227.7009–3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

LICENSE TERM (OCT 2001)

Alternate I (AUG 1984). The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the ''License Grant'' clause of this contract and any and all patents hereafter issued on applications for patent referred to in such ''License Grant'' clause.

Alternate II (OCT 2001). The license hereby granted shall terminate on the _____ day of _____ ,_____; *Provided,* however, that said termination shall be without prejudice to the completion of any contract entered

into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

[56 FR 36479, July 31, 1991, as amended at 66 FR 49861, Oct. 1, 2001]

252.227–7006 License grant—running royalty.

As prescribed at 227.7009–4(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT—RUNNING ROYALTY (AUG 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of _____, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of _____, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____
Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227–7007 License term—running royalty.

As prescribed at 227.7009–4(b), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TERM—RUNNING ROYALTY (AUG 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the ''License Grant'' clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

252.227–7008 Computation of royalties.

As prescribed at 227.7009–4(c), insert the following clause in patent releases, license agreements, and assignments:

COMPUTATION OF ROYALTIES (AUG 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of _____, at the rate of _____ percent of the net selling price of such articles or materials (amount) per (name of item)* whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of _____, ''net selling price,'' as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

252.227–7009 Reporting and payment of royalties.

As prescribed at 227.7009–4(d), insert the following clause in patent releases, license agreements, and assignments:

REPORTING AND PAYMENT OF ROYALTIES (AUG 1984)

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending _____ during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

*Use bracketed matter as appropriate.

*The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

(b) Royalties which have accrued under this contract during the yearly* period ending _____ shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided,* that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the ''License to Other Government Agencies'' clause (if any) of this contract, an amount greater than _____ dollars ($_____), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

252.227–7010 License to other Government agencies.

As prescribed at 227.7009–4(e), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TO OTHER GOVERNMENT AGENCIES (AUG 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the ''License Grant'' clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided,* however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227–7011 Assignments.

As prescribed at 227.7010, insert the following clause in assignments.

ASSIGNMENT (AUG 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of _____, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No. _____
Date _____
Name of Inventor _____
U.S. Application Serial No. _____
Filing Date _____
Name of Inventor _____

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227–7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____
(Contract No.)

PATENT LICENSE AND RELEASE CONTRACT (SEP 1999)

This CONTRACT is effective as of the ____ day of [month, year], between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ (hereinafter called the Contractor), (a corporation organized and existing under the laws of the State of _____), (a partnership consisting of _____), (an individual trading as _____), of the City of _____, in the State of _____.

Whereas, the Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227–7004 for a paid up license, or the clause at 252.227–7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227–7005 for a paid up license, or the clause at 252.227–7007 for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Insert the clause at 252.227–7001.)

Article 4. Non-Estoppel.

(Insert the clause at 252.227–7000.)

Article 5. Payment.

The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227–7006 in accordance with the instructions therein, and also the clause as specified at 252.227–7002 and 252.227–7009 and 252.227–7010.)

Article 6. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203–5.)

Article 7. Assignment of Claims.

(Insert the clause at FAR 52.232–23.)

Article 8. Gratuities.

(Insert the clause at FAR 52.203–3.)

Article 9. Disputes.

(Insert the clause at FAR 52.233–1.)

Article 10. Successors and Assignees.

This Agreement shall be binding upon the Contractor, its successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA
By _____
Date _____
(Signature and Title of
Contractor Representative) _____
By _____
Date _____

*If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227–7011.

**When the Contractor is an individual, change ''successors'' to ''heirs''; if a partnership, modify appropriately.

(End of clause)

[64 FR 49685, Sept. 14, 1999]

252.227–7013 Rights in technical data—Noncommercial items.

As prescribed in 227.7103–6(a), use the following clause:

RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS (JUN 2013)

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

(1) *Computer data base* means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) *Computer program* means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) *Covered Government support contractor* means a contractor 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.

(6) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) *Developed* means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ''developed,'' the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(10) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) *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.

(12) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(14) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(*2*) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(16) *Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or 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;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) *Government purpose rights.* (i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data 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.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) *Limited rights.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) 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 furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, 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 license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(iv) The Contractor acknowledges that—

(A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;

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

(C) The Contractor (or the party asserting restrictions as identified in the limited rights 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

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights 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.

(4) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) *Contractor rights in technical data.* All rights not granted to the Government are retained by the Contractor.

(d) *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

Technical data to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST)	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

[2] Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to

add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Data delivered or otherwise furnished to the Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings.* Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) *Removal of unjustified and nonconforming markings*—(1) *Unjustified technical data markings*. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data markings*. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) *Relation to patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data*. (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) *Applicability to subcontractors or suppliers*. (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to 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 or other contractual instruments for commercial items, 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 noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

Alternate I (JUN 1995). As prescribed in 227.7103–6(b)(1)), add the following paragraph (l) to the basic clause:

(l) *Publication for sale*. (1) This paragraph only applies to technical data in which the Government has obtained unlimited rights

or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

Alternate II (NOV 2009)

As prescribed in 227.7103–6(b)(2), add the following paragraphs (a)(17) and (b)(7) to the basic clause:

(a)(17) ''Vessel design'' means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq*.

(b)(7) *Vessel designs*. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

[60 FR 33490, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995; 74 FR 61044, Nov. 23, 2009; 76 FR 11367, Mar. 2, 2011; 76 FR 58148, Sept. 20, 2011; 77 FR 10976, Feb. 24, 2012; 78 FR 30238, May 22, 2013; 78 FR 37990, June 25, 2013]

252.227–7014 Rights in noncommercial computer software and noncommercial computer software documentation.

As prescribed in 227.7203–6(a)(1), use the following clause.

RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (MAY 2013)

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

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1) (i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Covered Government support contractor* means a contractor 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.

(7) *Developed* means that—

(i) A computer program has been successfully operated in a computer and tested to

the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(10) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(12) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(13) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(14) *Noncommercial computer software* means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(15) ''Restricted rights'' apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi) and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors 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;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software

decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 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;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

(16) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, non-exclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) *Government purpose rights.* (i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and

non-disclosure agreement at DFARS 227.7103–7; or

(B) The recipient is a Government contractor receiving access to the software or documentation 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.

(3) *Restricted rights.* (i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

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

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights 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 software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software 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.

(4) *Specifically negotiated license rights.* (i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14)of the Rights in Technical Data—Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(15) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a

form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled data for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract; the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Restricted rights markings.* Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No. _____(Insert contract number)_____, License No._____(Insert license identifier)_____. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) *Removal of unjustified and nonconforming markings*—(1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions—Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings.* A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions—Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings

and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation.* (1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

Alternate I (JUN 1995). As prescribed in 227.7203–6(a)(2), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.* (1) This paragraph only applies to computer software or computer software documentation in which the Government has obtained unlimited rights or a license to make an unrestricted release of the software or documentation.

(2) The Government shall not publish a deliverable item or items of computer software or computer software documentation identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such software or documentation on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such software or documentation, or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published software or documentation.

(3) This limitation on the Government's rights to publish for sale shall continue as long as the software or documentation are reasonably available to the public for purchase.

[60 FR 33493, June 28, 1995, as amended at 76 FR 11368, Mar. 2, 2011; 77 FR 10976, Feb. 24, 2012; 78 FR 30238, May 22, 2013]

252.227–7015 Technical data—Commercial items.

As prescribed in 227.7102–4(a)(1), use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (JUN 2013)

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

(1) *Commercial item* does not include commercial computer software.

(2) *Covered Government support contractor* means a contractor 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) The term *item* includes components or processes.

(5) *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 data incidental to contract administration, such as financial and/or management information.

(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 items; 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 items 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~~n~~ 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. 2320 and 10 U.S.C. 2321.

(2) Whenever any technical data related to commercial items 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 items, 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 item 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 item that was developed in any part at Government expense.

(End of clause)

Alternate I (DEC 2011)

As prescribed in 227.7102–4(a)(2), add the following paragraphs (a)(6) and (b)(4) to the basic clause:

(a)(6) *Vessel design* means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq.*

(b)(4) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

[60 FR 33497, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995; 74 FR 61045, Nov. 23, 2009; 76 FR 11368, Mar. 2, 2011; 76 FR 58148, Sept. 20, 2011; 76 FR 76320, Dec. 7, 2011; 78 FR 30239, May 22, 2013; 78 FR 37990, June 25, 2013]

252.227–7016 Rights in bid or proposal information.

As prescribed in 227.7103–6(e)(1), 227.7104(e)(1), or 227.7203–6(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011)

(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—Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in Noncommercial 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 Noncommercial Computer and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.

(b) *Government rights 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—Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer

Software Documentation, or Rights in Noncommercial 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.* 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)

[60 FR 33498, June 28, 1995, as amended at 76 FR 3538, Jan. 20, 2011]

252.227–7017 Identification and assertion of use, release, or disclosure restrictions.

As prescribed in 227.7103–3(b), 227.7104(e)(2), or 227.7203–3(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JAN 2011)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation—

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data—Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documents, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovation Research Program, the notification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)*****	(LIST)	(LIST)	(LIST)

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

(End of provision)

[60 FR 33498, June 28, 1994, as amended at 76 FR 3538, Jan. 20, 2011]

252.227–7018 Rights in noncommercial technical data and computer software—Small Business Innovation Research (SBIR) Program.

As prescribed in 227.7104(a), use the following clause:

RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (MAY 2013)

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

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Covered Government support contractor* means a contractor 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 the 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.

(7) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(8) *Developed* means—

(i) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ''developed,'' the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iv) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(9) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(10) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(11) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(12) *Form, fit, and function data* means technical data that describe 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.

(13) *Generated* means technical data or computer software first created in the performance of this contract.

(14) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

(15) ''Limited rights'' means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor in performance of its covered Government support contracts for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(*2*) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(16) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

(17) *Noncommercial computer software* means software that does not qualify as commercial

computer software under paragraph (a)(1) of this clause.

(18) ''Restricted rights'' apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(18)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(18)(ii), (v), (vi), and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the 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;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at 227.7103–7 or is a Government contractor receiving access to the 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;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of Government contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iv) of this clause.

(19) ''SBIR data rights'' means the Government's rights during the SBIR data protection period (specified in paragraph (b)(4) of this clause) to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated a SBIR award as follows:

(i) Limited rights in such SBIR technical data; and

(ii) Restricted rights in such SBIR computer software.

(20) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(21) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display,

or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data or noncommercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data, including computer software documentation, or computer software generated under this contract that are—

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Data or software in which the Government has acquired previously unlimited rights under another Government contract or through a specific license; and

(vi) SBIR data upon expiration of the SBIR data rights period.

(2) *Limited rights.* The Government shall have limited rights in technical data, that were not generated under this contract, pertain to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (f)(1) of this clause, with the legend prescribed in paragraph (f)(2) of this clause.

(3) *Restricted rights in computer software.* The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

(4) *SBIR data rights.* Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights in all technical data or computer software generated under this contract during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.

(5) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(4) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software than are enumerated in paragraph (a)(18) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(6) *Prior government rights.* Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(7) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with paragraph (a)(14), (a)(17), or (b)(4) of this clause, or in accordance with the terms of a license negotiated under paragraph (b)(5) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

(8) *Covered Government support contractors.* The Contractor acknowledges that—

(i) Limited rights technical data and restricted rights computer software 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 may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions as identified in a restrictive legend) regarding the covered Government support contractor's use of such data or software, 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 or software 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) *Rights in derivative computer software or computer software documentation*. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

(d) *Third party copyrighted technical data and computer software*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (b) of this clause and, prior to delivery of such—

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure*. (1) This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical data or computer software to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST)	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

[2] Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

(f) *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (f)(6) of this clause, only the following markings are authorized under this contract: the limited rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause, the SBIR data rights legend at paragraph (f)(4) of this clause, or the special license rights legend at paragraphs (f)(5) of

this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Limited rights markings.* Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(3) *Restricted rights markings.* Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *SBIR data rights markings:* Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(5) of this clause, technical data or computer software generated under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR data rights period on the legend:

SBIR Data Rights

Contract No. _____

Contractor Name _____

Address _____

_____

Expiration of SBIR Data Rights Period ____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(5) *Special license rights markings.* (i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(6) of this clause).

(6) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(h) *Removal of unjustified and nonconforming markings*—(1) *Unjustified markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings.* A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (6)) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data or computer software.* (1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor of supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) the Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes required by paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data or computer software is to 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, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

Alternate I (JUN 1995). As prescribed in 227.7104(d), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.* (1) This paragraph applies only to technical data or computer software delivered to the Government with SBIR data rights.

(2) Upon expiration of the SBIR data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor, prior to the expiration of the SBIR data rights period, or within two years following delivery of the data or software item, or within twenty-four months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the technical data or computer software are reasonably available to the public for purchase.

[60 FR 33499, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995; 76 FR 3538, Jan. 20, 2011; 76 FR 11369, Mar. 2, 2011; 78 FR 30239, May 22, 2013]

252.227–7019 Validation of asserted restrictions—Computer software.

As prescribed in 227.7104(e)(3) or 227.7203–6(c), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE (SEP 2011)

(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 Noncommercial Computer Software and Noncommercial 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 restrictions and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct the strike the markings at the 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) *Major systems.* When the Contracting Officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the computer software was developed exclusively at private expense.

(g) *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 (g)(1) of this clause, the Contracting Officer will issue a final decision, in accordance with paragraph (f) of this clause and the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other 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.

(h) *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 (h)(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 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 (h)(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.

(i) *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.

(j) *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)

[60 FR 33503, June 28, 1995, as amended at 76 FR 58148, Sept. 20, 2011]

252.227–7020 Rights in special works.

As prescribed in 227.7105–3, 227.7106(a) or 227.7205(a), use the following clause:

RIGHTS IN SPECIAL WORKS (JUN 1995)

(a) *Applicability*. This clause applies to works first created, generated, or produced and required to be delivered under this contract.

(b) *Definitions*. As used in this clause:

(1) ''Computer data base'' means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) ''Computer program'' means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) ''Computer software'' means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) ''Computer software documentation'' means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) ''Unlimited rights'' means the rights to use, modify, reproduce, perform, display, release, or disclose a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(6) The term ''works'' includes computer data bases, computer software, or computer software documentation; literary, musical, choreographic, or dramatic compositions; pantomimes; pictorial, graphic, or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

(c) *License rights*. (1) The Government shall have unlimited rights in works first produced, created, or generated and required to be delivered under this contract.

(2) When a work is first produced, created, or generated under this contract, and such work is required to be delivered under this contract, the Contractor shall assign copyright in those works to the Government. The Contractor, unless directed to the contrary by the Contracting Officer, shall place the following notice on such works: ''© (*Year date of delivery*) United States Government, as represented by the Secretary of (*department*). All rights reserved.''

For phonorecords, the ''©'' markings shall be replaced by a ''P''.

(3) The Contractor grants to the Government a royalty-free, world-wide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Contractor's copyrighted works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

(d) *Third party copyrighted data*. The Contractor shall not incorporate, without the written approval of the Contracting Officer, any copyrighted works in the works to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license of the scope identified in paragraph (c)(3) of this clause and, prior to delivery of such works—

(1) Has affixed to the transmittal document a statement of the license rights obtained; or

(2) For computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Indemnification*. The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) *Government-furnished information*. Paragraphs (d) and (e) of this clause are not applicable to information furnished to the Contractor by the Government and incorporated in the works delivered under this contract.

(End of clause)

[60 FR 33504, June 28, 1995]

252.227–7021 Rights in data—existing works.

As prescribed at 227.7105–2(a), use the following clause:

RIGHTS IN DATA—EXISTING WORKS (MAR 1979)

(a) The term *works* as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to

the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33504, June 28, 1994]

252.227–7022 Government rights (unlimited).

As prescribed at 227.7107–1(a), use the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33504, June 28, 1994]

252.227–7023 Drawings and other data to become property of Government.

As prescribed at 227.7107–1(b), use the following clause:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the ''person for whom the work was prepared'' for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7024 Notice and approval of restricted designs.

As prescribed at 227.7107–3, use the following clause:

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

As prescribed in 227.7103–6(c), 227.7104(f)(1), or 227.7203–6(d), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAY 2013)

(a)(1) For contracts in which the Government will furnish the Contractor with technical data, the terms ''covered Government support contractor,'' ''limited rights,'' and ''Government purpose rights'' are defined in the clause at 252.227–7013, Rights in Technical Data–Noncommercial Items.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms ''covered Government support contractor,'' ''government purpose rights,'' and ''restricted rights'' are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms ''covered Government support contractor,'' ''limited rights,'' ''restricted rights,'' and ''SBIR data rights'' are defined in the clause at 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited rights, restricted rights, or SBIR data rights legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103–7.

(3) *GFI marked with specially negotiated license rights legends.*

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at 227.7103–7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause

(5) *Covered Government support contractors.* If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii) of this clause, the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole

purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) *Indemnification and creation of third party beneficiary rights.* The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(d) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

[78 FR 30241, May 22, 2013]

252.227–7026 Deferred delivery of technical data or computer software.

As prescribed at 227.7103–8(a), use the following clause:

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as ''deferred delivery'' data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7027 Deferred ordering of technical data or computer software.

As prescribed at 227.7103–8(b), use the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts

the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the ''Rights in Technical Data and Computer Software'' clause of this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7028 Technical data or computer software previously delivered to the government.

As prescribed in 227.7103–6(d), 227.7104(f)(2), or 227.7203–6(e), use the following provision:

TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

[60 FR 33505, June 28, 1995]

252.227–7029 [Reserved]

252.227–7030 Technical data—withholding of payment.

As prescribed at 227.7103–6(e)(2) or 227.7104(e)(4), use the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT (MAR 2000)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227–7013(e)(2) or 252.227–7018(e)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995; 62 FR 34132, June 24, 1997; 65 FR 14398, Mar. 16, 2000]

252.227–7031 [Reserved]

252.227–7032 Rights in technical data and computer software (foreign).

As prescribed in 227.7103–17, use the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN) (JUN 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7033 Rights in shop drawings.

As prescribed in 227.7107–(1)(c), use the following clause:

RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government

may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7034—252.227–7036 [Reserved]

252.227–7037 Validation of restrictive markings on technical data.

As prescribed in 227.7102–4(c), 227.7103–6(e)(3), 27.7104(e)(5), or 227.7203–6(f), use the following clause:

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (JUN 2013)

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(b) *Presumption regarding development exclusively at private expense.*

(1) *Commercial items.* For commercially available off-the-shelf items (defined at 41 U.S.C. 104) in all cases, and for all other commercial items except as provided in paragraph (b)(2) of this clause, the Contracting Officer will presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Contracting Officer shall not challenge such assertions unless the Contracting Officer has information that demonstrates that the item, component, or process was not developed exclusively at private expense.

(2) *Major systems.* The presumption of development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items (which are governed by paragraph (b)(1) of this clause). When the Contracting Officer challenges an asserted restriction regarding technical data for a major system or a subsystem or component thereof on the basis that the item, component, or process was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Contractor or subcontractor demonstrates that the item, component, or process 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 shall 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 shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

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

(ii) Require a response within sixty (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 shall 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 the 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, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall 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 paragraph (b) of this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall 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 shall 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 shall be issued within sixty (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 sixty (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 shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (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 of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (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 of a period of ninety (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 ninety (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 ninety (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 ninety (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 one (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 shall continue to be bound by the restrictive marking; and

(ii) The Government shall 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. 2321.

(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 items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

(End of clause)

[60 FR 33505, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995; 64 FR 51077, Sept. 21, 1999; 69 FR 31912, June 8, 2004; 76 FR 58138, 58149, Sept. 20, 2011; 77 FR 23632, Apr. 20, 2012; 77 FR 76938, Dec. 31, 2012; 78 FR 37990, June 25, 2013]

252.227–7038 Patent Rights—Ownership by the Contractor (Large Business).

As prescribed in 227.303(2), use the following clause:

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012)

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

(1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Nonprofit organization means—

(1) A university or other institution of higher education;

(2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or

(3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means—

(1)(i) To manufacture, in the case of a composition or product;

(ii) To practice, in the case of a process or method; or

(iii) To operate, in the case of a machine or system; and

(2) In each case, under such conditions as to establish that—

(i) The invention is being utilized; and

(ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor's rights*—(1) *Ownership.* The Contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License.* (i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license-

(A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part;

(B) Includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at the time of contract award; and

(C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The agency—

(A) May revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency—

(A) Will furnish the Contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the Contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The Contractor has the right to appeal, in accordance with 37 CFR part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) *Contractor's obligations.* (1) The Contractor shall—

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters, or within 6 months after the Contractor first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure—

(A) The inventor(s) and the contract under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall—

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) *Government's rights*—(1) *Ownership.* The Contractor shall assign to the agency, upon written request, title to any subject invention—

(i) If the Contractor elects not to retain title to a subject invention;

(ii) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Contractor's failure to report or elect within the specified times;

(iii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country; and

(iv) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License.* If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest.* (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall—

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to—

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: ''This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention.''

(5) The Contractor shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of—

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor shall, when licensing a subject invention, arrange to—

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The Contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) The Contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the Contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The Contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) *Reporting on utilization of subject inventions*. (1) The Contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Contractor's permission, if the data or information is considered by the Contractor or its licensee or assignee to be ''privileged and confidential'' (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) *Preference for United States industry*. Notwithstanding any other provision of this clause, the Contractor agrees that neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement

upon a showing by the Contractor or its assignee that—

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this contract before the Contractor delivers to the Contracting Officer—

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) *Subcontracts.* (1) The Contractor—

(i) Shall include the substance of the Patent Rights-Ownership by the Contractor clause set forth at 52.227–11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier—

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

(End of clause)

Alternate I (DEC 2007). As prescribed in 227.303(2)(ii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: _____*.

*[*Contracting Officer to complete with the names of applicable existing treaties or international agreements. This paragraph is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

Alternate II (DEC 2007). As prescribed in 227.303(2)(iii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The agency reserves the right to—

(A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract; and

(B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.

[72 FR 69160, Dec. 7, 2007, as amended at 77 FR 76938, Dec. 31, 2012]

252.227–7039 Patents—reporting of subject inventions.

As prescribed in 227.303(1), use the following clause:

PATENTS—REPORTING OF SUBJECT INVENTIONS (APR 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 72 FR 69162, Dec. 7, 2007]

252.228–7000 Reimbursement for war-hazard losses.

As prescribed in 228.370(a), use the following clause:

REIMBURSEMENT FOR WAR-HAZARD LOSSES (DEC 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph (b) of the Workers' Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor—

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within one year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract—

(i) An investigation report and evaluation of any potential claim; and

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this clause is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

(d) The Contractor agrees to—

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend in its own behalf.

(End of clause)

252.228–7001 Ground and flight risk.

As prescribed in 228.370(b), use the following clause:

GROUND AND FLIGHT RISK (JUN 2010)

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

(1) *Aircraft,* unless otherwise provided in the contract

Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing, or a wing is attached to a fuselage of the aircraft;

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all Government property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement;

(iii) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(iv) Conventional winged aircraft, as well as helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft specified in this contract.

(2) *Contractor's managerial personnel* means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant or separate location; or

(iii) A separate and complete major industrial operation.

(3) *Contractor's premises* means those premises, including subcontractors' premises, designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(4) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, ''flight'' begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) For seaplanes, ''flight'' begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises.

(iii) For helicopters, ''flight'' begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) For vertical take-off or landing aircraft, ''flight'' begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises.

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(5) *Flight crew member* means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. It also includes any pilot or operator of an unmanned aerial vehicle. If required, a defense systems operator may also be assigned as a flight crew member.

(6) *In the open* means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being ''in the open.'' Government-furnished aircraft shall be considered to be located ''in the open'' at all times while in the Contractor's possession, care, custody, or control.

(7) *Operation* means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) *Combined regulation/instruction.* The Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'' (Air Force Instruction 10–220, Army Regulation 95–20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3, and Defense Contract Management Agency Instruction 8210.1) in effect on the date of contract award.

(c) *Government as self-insurer.* Subject to the conditions in paragraph (d) of this clause, the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft ''in the open,'' during ''operation,'' and in ''flight,'' except as may be specifically provided in the Schedule as an exception to this clause. The Contractor shall not be liable to the Government for such damage, loss, or destruction beyond the Contractor's share of loss amount under the Government's self-insurance.

(d) *Conditions for Government's self-insurance.* The Government's assumption of risk for aircraft in the open shall continue unless

the Contracting Officer finds that the Contractor has failed to comply with paragraph (b) of this clause, or that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding that the Contractor has failed to comply with paragraph (b) of this clause or that the aircraft is in the open under unreasonable conditions, shall notify the Contractor in writing and shall require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable.

(i) If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions.

(ii) Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the Contractor.

(i) If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk.

(ii) Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk pursuant to the terms of this clause—

(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of the affected aircraft;

(ii) Any costs incurred by the Contractor (including the costs of the Contractor's self-insurance, insurance premiums paid to insure the Contractor's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its assumption of risk are unallowable costs; and

(iii) The liability provisions of the Government Property clause of this contract are not applicable to the affected aircraft.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected.

(i) If, upon receipt of the Contractor's notice of the correction of the unreasonable conditions, the Government elects to again assume the risk of loss and relieve the Contractor of its liability for damage, loss, or destruction of the aircraft, the Contracting Officer will notify the Contractor of the Contracting Officer's decision to resume the Government's risk of loss. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Government's receipt of the Contractor's notice of correction until the Contractor is notified that the Government will resume the risk of loss.

(ii) If the Government does not again assume the risk of loss and the unreasonable conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day after the Government's receipt of the Contractor's notice of correction.

(6) The Government's termination of its assumption of risk of loss does not relieve the Contractor of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations.''

(e) *Exclusions from the Government's assumption of risk.* The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice, including oversight of a subcontractor's program;

(2) Is sustained during flight if either the flight or the flight crew members have not been approved in advance of any flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation/instruction entitled ''Contractor's Flight and Ground Operations'';

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage

consists of reasonable wear and tear or deterioration, or results from inherent vice, *e.g.*, a known condition or design defect in the property); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(f) *Contractor's share of loss and Contractor's deductible under the Government's self-insurance.* (1) The Contractor assumes the risk of loss and shall be responsible for the Contractor's share of loss under the Government's self-insurance. That share is the lesser of—

(i) The first $100,000 of loss or damage to aircraft in the open, during operation, or in flight resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel; or

(ii) Twenty percent of the price or estimated cost of this contract.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (j) of this clause shall not include the dollar amount of the risk assumed by the Contractor.

(3) In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government, as directed by the Contracting Officer, the lesser of—

(i) $100,000;

(ii) Twenty percent of the price or estimated cost of this contract; or

(iii) The amount of the loss.

(4) For task order and delivery order contracts, the Contractor's share of the loss shall be the lesser of $100,000 or twenty percent of the combined total price or total estimated cost of those orders issued to date to which the clause applies.

(5) The costs incurred by the Contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to—

(i) The Contractor's share of loss under the Government's self-insurance;

(ii) The costs of the Contractor's self-insurance;

(iii) The deductible for any Contractor-purchased insurance;

(iv) Insurance premiums paid for Contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Contractor's liability.

(g) *Subcontractor possession or control.* The Contractor shall not be relieved from liability for damage, loss, or destruction of aircraft while such aircraft is in the possession or control of its subcontractors, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract.

(h) *Contractor's exclusion of insurance costs.* The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, including the Contractor share of loss in this clause, even if the assumption may be terminated for aircraft in the open.

(i) *Procedures in the event of loss.* (1) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, and to put all aircraft in the best possible order. Except in cases covered by paragraph (f)(2) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) The Contracting Officer will make an equitable adjustment for expenditures made by the Contractor in performing the obligations under this paragraph.

(j) *Loss prior to delivery.*

(1) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(i) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(ii) Terminate this contract with respect to the aircraft. Notwithstanding the provisions in any other termination clause under this contract, in the event of termination, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(A) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(B) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

(2) The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause of this contract.

(k) *Reimbursement from a third party*. In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(l) *Government acceptance of liability*. To the extent the Government has accepted such liability under other provisions of this contract, the Contractor shall not be reimbursed for liability to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight unless the flight crew members previously have been approved for this flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled ''Contractor's Flight and Ground Operations''.

(m) *Subcontracts*. The Contractor shall incorporate the requirements of this clause, including this paragraph (m), in all subcontracts.

(End of clause)

[75 FR 32645, June 8, 2010]

252.228–7002 [Reserved]

252.228–7003 Capture and detention.

As prescribed in 228.370(c), use the following clause:

CAPTURE AND DETENTION (DEC 1991)

(a) As used in this clause—

(1) *Captured person* means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A *period of detention* begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) *United States* comprises geographically the 50 states and the District of Columbia.

(4) *War Hazards Compensation Act* refers to the statute compiled in chapter 12 of title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for

capture and detention under the War Hazards Compensation Act, as amended.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992; 75 FR 32647, June 8, 2010]

252.228–7004 Bonds or other security.

As prescribed in 228.170, use the following provision:

BONDS OR OTHER SECURITY (DEC 1991)

(a) Offerors shall furnish a bid guarantee in the amount of $_____ with their bids. The offeror receiving notice of award shall furnish—

(1) A performance bond in the penal amount of $_____; and

(2) Payment in full of any sum due the Government.

(b) The Contractor shall furnish the performance bond to the Contracting Officer within ____ days after receipt of the notice of award. The Contracting Officer will not issue the notice to proceed until receipt of an acceptable performance bond and payment of any sum due the Government.

(c) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(End of provision)

252.228–7005 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.

As prescribed in 228.370(d), use the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 32647, June 8, 2010]

252.228–7006 Compliance with Spanish laws and insurance.

As prescribed at 228.370(e), use the following clause:

COMPLIANCE WITH SPANISH LAWS AND INSURANCE (DEC 1998)

(a) The requirements of this clause apply only if the Contractor is not a Spanish concern.

(b) The Contractor shall, without additional expense to the United States Government, comply with all applicable Spanish Government laws pertaining to sanitation, traffic, security, employment of labor, and all other laws relevant to the performance of this contract. The Contractor shall hold the United States Government harmless and free from any liability resulting from the Contractor's failure to comply with such laws.

(c) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, all workmen's compensation, employees' liability, bodily injury insurance, and other required insurance adequate to cover the risk assumed by the Contractor. The Contractor shall indemnify and hold harmless the United States Government from liability resulting from all claims for damages as a result of death or injury to personnel or damage to real or personal property related to the performance of this contract.

(d) The Contractor agrees to represent in writing to the Contracting Officer, prior to commencement of work and not later than 15 days after the date of the Notice to Proceed, that the Contractor has obtained the required types of insurance in the following minimum amounts. The representation also shall state that the Contractor will promptly notify the Contracting Officer of any notice of cancellation of insurance or material change in insurance coverage that could affect the United States Government's interests.

Type of insurance	Coverage per person	Coverage per accident	Property damage
Comprehensive General Liability	$300,000	$1,000,000	$100,000

(e) The Contractor shall provide the Contracting Officer with a similar representation for all subcontracts with non-Spanish concerns that will perform work in Spain under this contract.

(f) Insurance policies required herein shall be purchased from Spanish insurance companies or other insurance companies legally authorized to conduct business in Spain. Such policies shall conform to Spanish laws and regulations and shall—

(1) Contain provisions requiring submission to Spanish law and jurisdiction of any problem that may arise with regard to the interpretation or application of the clauses and conditions of the insurance policy;

(2) Contain a provision authorizing the insurance company, as subrogee of the insured entity, to assume and attend to directly, with respect to any person damaged, the legal consequences arising from the occurrence of such damages;

(3) Contain a provision worded as follows: ''The insurance company waives any right of subrogation against the United States of America that may arise by reason of any payment under this policy.'';

(4) Not contain any deductible amount or similar limitation; and

(5) Not contain any provisions requiring submission to any type of arbitration.

(End of clause)

[62 FR 34132, June 24, 1997, as amended at 63 FR 69006, Dec. 15, 1998; 75 FR 32647, June 8, 2010]

252.229–7000 Invoices exclusive of taxes or duties.

As prescribed in 229.402–1, use the following clause:

INVOICES EXCLUSIVE OF TAXES OR DUTIES (JUN 1997)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

(End of clause)

[62 FR 34132, June 24, 1997]

252.229–7001 Tax relief.

As prescribed in 229.402–70(a), use the following clause:

TAX RELIEF (JUN 1997)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: (Offeror Insert) RATE (PERCENTAGE): (Offeror Insert)

(b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

Alternate I (JUN 1997). As prescribed in 229.402–70(a), add the following paragraph (d) to the basic clause:

(d) Tax relief will be claimed in Germany pursuant to the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense. The Contractor shall use Abwicklungsschein fuer abgabenbeguenstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen (Performance Certificate for Tax-Free Deliveries/Performance according to the Offshore Tax Relief Agreement) or other documentary evidence acceptable to the German tax authorities. All purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.

[62 FR 34132, June 24, 1997]

252.229–7002 Customs exemptions (Germany).

As prescribed in 229.402–70(b), use the following clause:

CUSTOMS EXEMPTIONS (GERMANY) (JUN 1997)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by the Contractor in accordance with the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense.

(End of clause)

[62 FR 34133, June 24, 1997]

252.229–7003 Tax Exemptions (Italy).

As prescribed in 229.402–70(c)(1), use the following clause:

TAX EXEMPTIONS (ITALY) (MAR 2012)

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy.

(1) The Contractor shall include the following information on invoices submitted to the United States Government:

(i) The contract number.

(ii) The IVA tax exemption claimed pursuant to Article 72 of Decree Law 633, dated October 26, 1972.

(iii) The following fiscal code(s): [*Contracting Officer must insert the applicable fiscal code(s) for military activities within Italy: 80028250241 for Army, 80156020630 for Navy, or 91000190933 for Air Force*].

(2)(i) Upon receipt of the invoice, the paying office will include the following certification on one copy of the invoice:

''I certify that this invoice is true and correct and reflects expenditures made in Italy for the Common Defense by the United States Government pursuant to international agreements. The amount to be paid does not include the IVA tax, because this transaction is not subject to the tax in accordance with Article 72 of Decree Law 633, dated October 26, 1972.'' An authorized United States Government official will sign the copy of the invoice containing this certification.

(ii) The paying office will return the certified copy together with payment to the Contractor. The payment will not include the amount of the IVA tax.

(iii) The Contractor shall retain the certified copy to substantiate non-payment of the IVA tax.

(3) The Contractor may address questions regarding the IVA tax to the Ministry of Finance, IVA Office, Rome (06) 520741.

(c) In addition to the IVA tax, purchases by the United States Forces in Italy are exempt from the following taxes:

(1) Imposta di Fabbricazione (Production Tax for Petroleum Products).

(2) Imposta di Consumo (Consumption Tax for Electrical Power).

(3) Dazi Doganali (Customs Duties).

(4) Tassa di Sbarco e d'Imbarco sulle Merci Transportate per Via Aerea e per Via Maritima (Port Fees).

(5) Tassa de Circolazione sui Veicoli (Vehicle Circulation Tax).

(6) Imposta di Registro (Registration Tax).

(7) Imposta di Bollo (Stamp Tax).

(End of clause)

[67 FR 4210, Jan. 29, 2002, as amended at 77 FR 19131, Mar. 30, 2012]

252.229–7004 Status of contractors as a direct contractor (Spain).

As prescribed in 229.402–70(d), use the following clause:

STATUS OF CONTRACTOR AS A DIRECTOR CONTRACTOR (SPAIN) (JUN 1997)

(a) ''Direct Contractor,'' as used in this clause, means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a written agreement that allows duty-free import of equipment, materials, and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated as a Direct Contractor under the provisions of Complementary Agreement 5, articles 11, 14, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom of Spain, dated July 2, 1982. The Agreement relates to contacts to be performed in whole or part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a Direct Contractor in order to complete duty-free import of non-Spanish equipment, materials, and supplies represented as necessary for contract performance by the Contracting Officer. Orders for equipment, materials, and supplies placed prior to official notification of such approval shall be at the Contractor's own risk. The Contractor must submit its documentation in sufficient time to permit processing by the appropriate United States and Spanish Government agencies prior to the arrival of the equipment, material, or supplies in Spain. Seasonal variations in processing times are common, and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions of this contract), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph (g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported on a duty-free basis.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraph (d) or (e) of this clause normally shall be 5 percent of the contract value. However, if the Contractor demonstrates to the Contracting Officer's satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to the Contractor until the Spanish General Directorate of Customs verifies the accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is (*Contracting Officer insert amount at time of contract award).*

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)

[62 FR 34133, June 24, 1997, as amended at 63 FR 11548, Mar. 9, 1998]

252.229–7005 Tax exemptions (Spain).

As prescribed in 229.402–70(e)(1), use the following clause:

TAX EXEMPTIONS (SPAIN) (MAR 2012)

(a) As the Contractor represented in its offer, the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

(1) Derechos de Aduana (Customs Duties).

(2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports).

(3) Transmissiones Patrionomiales (Property Transfer Tax).

(4) Impuesto Sobre el Lujo (Luxury Tax).

(5) Actos Juridocos Documentados (Legal Official Transactions).

(6) Impuesto Sobre el Trafico de Empresas (Business Trade Tax).

(7) Impuestos Especiales de Fabricacion (Special Products Tax).

(8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its By-Products).

(9) Impuesto Sobre el Uso de Telefona (Telephone Tax).

(10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).

(11) Impuesto Industrial (Industrial Tax).

(12) Impuesto de Rentas Sobre el Capital (Capital Gains Tax).

(13) Plus Vailia (Increase on Real Property).

(14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax).

(15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).

(16) Impuestos de la Diputacion (County Service Charges).

(17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).

(End of clause)

[62 FR 34133, June 24, 1997, as amended at 77 FR 19131, Mar. 30, 2012]

252.229–7006 Value Added Tax Exclusion (United Kingdom)

As prescribed in 229.402–70(f), use the follow clause:

VALUE ADDED TAX EXCLUSION (UNITED KINGDOM) (DEC 2011)

The supplies or services identified in this contract are to be delivered at a price exclusive of value added tax under arrangements between the appropriate United States authorities and Her Majesty's Revenue and Customs (HMRC) (Reference HMRC Notice 431, entitled ''Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom''). By executing this contract, the Contracting Officer certifies that these supplies or services are being purchased for United States Government official purposes only.

(End of clause)

[76 FR 76320, Dec. 7, 2011]

252.229–7007 Verification of United States receipt of goods.

As prescribed in 229.402–70(g), use the following clause:

VERIFICATION OF UNITED STATES RECEIPT OF GOODS (JUN 1997)

The Contractor shall insert the following statement on all Material Inspection and Receiving Reports (DD Form 250 series) for Contracting Officer approval: ''I certify that the items listed on this invoice have been received by the United States.''

(End of clause)

[62 FR 34134, June 24, 1997]

252.229–7008 Relief from Import Duty (United Kingdom)

As prescribed in 229.402–70(h), use the following clause:

RELIEF FROM IMPORT DUTY (UNITED KINGDOM) (DEC 2011)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duties. Any imported items supplied for which import duty already has been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty's Revenue and Customs (HMRC) to obtain a refund upon completion of the contract (Reference HMRC Notice No. 431, entitled ''Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom'').

(End of clause)

[76 FR 76320, Dec. 7, 2011]

252.229–7009 Relief from customs duty and value added tax on fuel (passenger vehicles) (United Kingdom).

As prescribed in 229.402–70(i), use the following clause:

RELIEF FROM CUSTOMS DUTY AND VALUE ADDED TAX ON FUEL (PASSENGER VEHICLES) (UNITED KINGDOM) (JUN 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, fuels and lubricants used by passenger vehicles (except taxis) in the performance of this contract will be exempt from customs duty and value added tax. Therefore, the procedures outlined in HM Customs and Excise Notice No. 431B, August 1982, and any amendment thereto, shall be used to obtain relief from both customs duty and value added tax for fuel used under the contract. These procedures shall apply to both loaded and unloaded miles. The unit prices shall be based on the recoupment by the Contractor of customs duty in accordance with the following allowances:

(1) Vehicles (except taxis) with a seating capacity of less than 29, one gallon for every 27 miles.

(2) Vehicles with a seating capacity of 29–53, one gallon for every 13 miles.

(3) Vehicles with a seating capacity of 54 or more, one gallon for every 10 miles.

(b) In the event the mileage of any route is increased or decreased within 10 percent, resulting in no change in route price, the customs duty shall be reclaimed from HM Customs and Excise on actual mileage performed.

(End of clause)

[62 FR 34134, June 24, 1997]

252.229–7010 Relief from customs duty on fuel (United Kingdom).

As prescribed in 229.402–70(j), use the following clause:

RELIEF FROM CUSTOMS DUTY ON FUEL (UNITED KINGDOM) (JUN 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, it is possible to obtain relief from customs duty on fuels and lubricants used in support of certain contracts. If vehicle fuels and lubricants are used in support of this contract, the Contractor shall seek relief from customs duty in accordance with HM Customs Notice No. 431, February 1973, entitled ''Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.'' Application should be sent to the Contractor's local Customs and Excise Office.

(b) Specific information should be included in the request for tax relief, such as the number of vehicles involved, types of vehicles, rating of vehicles, fuel consumption, estimated mileage per contract period, and any other information that will assist HM Customs and Excise in determining the amount of relief to be granted.

(c) Within 30 days after the award of this contract, the Contractor shall provide the Contracting Officer with evidence that an attempt to obtain such relief has been initiated. In the event the Contractor does not attempt to obtain relief within the time specified, the Contracting Officer may deduct from the contract price the amount of relief that would have been allowed if HM

Customs and Excise had favorably considered the request for relief.

(d) The amount of any rebate granted by HM Customs and Excise shall be paid in full to the United States Government. Checks shall be made payable to the Treasurer of the United States and forwarded to the Administrative Contracting Officer.

(End of clause)

[62 FR 34134, June 24, 1997]

252.229–7011 Reporting of Foreign Taxes—U.S. Assistance Programs.

As prescribed in 229.170–4, use the following clause:

REPORTING OF FOREIGN TAXES—U.S. ASSISTANCE PROGRAMS (SEP 2005)

(a) *Definition. Commodities*, as used in this clause, means any materials, articles, supplies, goods, or equipment.

(b) Commodities acquired under this contract shall be exempt from all value added taxes and customs duties imposed by the recipient country. This exemption is in addition to any other tax exemption provided through separate agreements or other means.

(c) The Contractor shall inform the foreign government of the tax exemption, as documented in the Letter of Offer and Acceptance, country-to-country agreement, or interagency agreement.

(d) If the foreign government or entity nevertheless imposes taxes, the Contractor shall promptly notify the Contracting Officer and shall provide documentation showing that the foreign government was apprised of the tax exemption in accordance with paragraph (c) of this clause.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for commodities that exceed $500.

(End of clause)

[70 FR 57192, Sept. 30, 2005]

252.229–7012 Tax exemptions (Italy)—representation.

As prescribed in 229.402–70(c)(2), use the following provision:

TAX EXEMPTIONS (ITALY)—REPRESENTATION (MAR 2012)

(a) *Exemptions*. The United States Government is exempt from payment of—

(1) Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy; and

(2) The other taxes specified in paragraph (c) of the clause DFARS 252.229–7003, Tax Exemptions (Italy).

(b) *Representation*. By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

[77 FR 19131, Mar. 30, 2012]

252.229–7013 Tax exemptions (Spain)—representation.

As prescribed in 229.402–70(e)(2), use the following provision:

TAX EXEMPTIONS (SPAIN)—REPRESENTATION (APR 2012)

(a) *Exemptions*. In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the resultant contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the excise, luxury, and transaction taxes listed in paragraph (b) of the clause DFARS 252.229–7005, Tax Exemptions (Spain).

(b) *Representation*. By submission of its offer, the offeror represents that the offered price, including the prices of subcontracts to be awarded under the contract, does not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(End of provision)

[77 FR 19131, Mar. 30, 2012, as amended at 77 FR 23632, Apr. 20, 2012]

252.231–7000 Supplemental cost principles.

As prescribed in 231.100–70, use the following clause:

SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

252.232–7000 Advance payment pool.

As prescribed in 232.412–70(a), use the following clause:

ADVANCE PAYMENT POOL (DEC 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated _____.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (*insert the name of the contractor*). The Agreement is incorporated in the contract by reference.

(End of clause)

252.232–7001 Disposition of payments.

As prescribed in 232.412–70(b), use the following clause:

DISPOSITION OF PAYMENTS (DEC 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (*insert the name of the disbursing office in the advance payment pool agreement*), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.232–7002 Progress payments for foreign military sales acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (DEC 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232–7003 Electronic submission of payment requests and receiving reports.

As prescribed in 232.7004(a), use the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (JUN 2012)

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

(1) *Contract financing payment* and *invoice payment* have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) *Electronic form* means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using Wide Area WorkFlow (WAWF) or another electronic form authorized by the Contracting Officer.

(3) *Payment request* means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(4) ''Receiving report'' means the data required by the clause at 252.246–7000, Material Inspection and Receiving Report.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests and receiving reports using WAWF, in one of the following electronic formats that WAWF accepts: Electronic Data Interchange, Secure File Transfer Protocol, or World Wide Web input. Information regarding WAWF is available on the Internet at *https://wawf.eb.mil/*.

(c) The Contractor may submit a payment request and receiving report using other than WAWF only when—

(1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment;

(2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System);

(3) DoD makes payment for rendered health care services using the TRICARE Encounter Data System (TEDS) as the electronic format; or

(4) When the Governmentwide commercial purchase card is used as the method of payment, only submission of the receiving report in electronic form is required.

(d) The Contractor shall submit any nonelectronic payment requests using the method or methods specified in Section G of the contract.

(e) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payments requests.

(End of clause)

[68 FR 8455, Feb. 21, 2003, as amended at 68 FR 15380, Mar. 31, 2003; 68 FR 69630, Dec. 15, 2003; 69 FR 1926, Jan. 13, 2004; 71 FR 27644, May 12, 2006; 72 FR 14241, Mar. 27, 2007; 73 FR 11358, Mar. 3, 2008; 77 FR 38733, June 29, 2012]

252.232–7004 DoD progress payment rates.

As prescribed in 232.502–4–70(b), use the following clause:

DoD Progress Payment Rates (OCT 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 95 percent.

(End of clause)

[66 FR 49865, Oct. 1, 2001]

252.232–7005 Reimbursement of subcontractor advance payments—DoD pilot mentor-protege program.

As prescribed in 232.412–70(c), use the following clause:

Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program (SEP 2001)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232–12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if there were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable, contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

[56 FR 67221, Dec. 30, 1991, as amended at 57 FR 53602, Nov. 12, 1992; 66 FR 47109, Sept. 11, 2001]

252.232–7006 Wide Area WorkFlow Payment Instructions.

As prescribed in 232.7004(b), use the following clause:

Wide Area Workflow Payment Instructions (MAY 2013)

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

Department of Defense Activity Address Code (DoDAAC) is a six position code that uniquely identifies a unit, activity, or organization.

Document type means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

Local processing office (LPO) is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) *Electronic invoicing*. The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports.

(c) *WAWF access*. To access WAWF, the Contractor shall—

(1) Have a designated electronic business point of contact in the System for Award

Management at *https://www.acquisition.gov;* and

(2) Be registered to use WAWF at *https://wawf.eb.mil/* following the step-by-step procedures for self-registration available at this Web site.

(d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the ''Web Based Training'' link on the WAWF home page at *https://wawf.eb.mil/.*

(e) *WAWF methods of document submission.* Document submissions may be via Web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions.* The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:

(1) *Document type.* The Contractor shall use the following document type(s).

(*Contracting Officer: Insert applicable document type(s). Note: If a ''Combo'' document type is identified but not supportable by the Contractor's business systems, an ''Invoice'' (stand-alone) and ''Receiving Report'' (stand-alone) document type may be used instead.*)

(2) *Inspection/acceptance location.* The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

(*Contracting Officer: Insert inspection and acceptance locations or ''Not applicable.''*)

(3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

ROUTING DATA TABLE*

Field Name in WAWF	*Data to be entered in WAWF*
Pay Official DoDAAC	
Issue By DoDAAC	
Admin DoDAAC	
Inspect By DoDAAC	
Ship To Code	
Ship From Code	
Mark For Code	
Service Approver (DoDAAC)	
Service Acceptor (DoDAAC)	
Accept at Other DoDAAC	
LPO DoDAAC	
DCAA Auditor DoDAAC	
Other DoDAAC(s)	

(**Contracting Officer: Insert applicable DoDAAC information or ''See schedule'' if multiple ship to/acceptance locations apply, or ''Not applicable.''*)

(4) *Payment request and supporting documentation.* The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

(5) *WAWF email notifications.* The Contractor shall enter the email address identified below in the ''Send Additional Email Notifications'' field of WAWF once a document is submitted in the system.

(*Contracting Officer: Insert applicable email addresses or ''Not applicable.''*)

(g) *WAWF point of contact.* (1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact.

(*Contracting Officer: Insert applicable information or ''Not applicable.''*)

(2) For technical WAWF help, contact the WAWF helpdesk at 866–618–5988.

[77 FR 38734, June 29, 2012, as amended at 78 FR 28758, May 16, 2013; 78 FR 30232, May 22, 2013]

252.232–7007 Limitation of Government's obligation.

As prescribed in 232.705–70, use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (MAY 2006)

(a) Contract line item(s) _____* through _____* are incrementally funded. For these item(s), the sum of $_____* of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled ''Termination for Convenience of the Government.'' As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated

termination settlement costs for those items(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause, or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraph (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled ''Disputes.''

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ''Default.'' The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) or (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract $____
(month) (day), (year) $____
(month) (day), (year) $____
(month) (day), (year) $____

(End of clause)

Alternate I (MAY 2006). If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause.

(a) Contract line item _____ is incrementally funded. The sum of $_____* is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (j) of this clause.

*To be inserted after negotiation.

[58 FR 46093, Sept. 1, 1993, as amended at 71 FR 18673, Apr. 12, 2006; 71 FR 27644, May 12, 2006]

252.232–7008 Assignment of claims (overseas).

As prescribed in 232.806(a)(1), use the following clause:

ASSIGNMENT OF CLAIMS (OVERSEAS) (JUN 1997)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract of any plans, specifications, or other similar documents relating to work under this contract, if marked ''Top Secret,'' ''Secret,'' or ''Confidential'' be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

[62 FR 34134, June 24, 1997]

252.232–7009 Mandatory payment by Governmentwide commercial purchase card.

As prescribed in 232.1110, use the following clause:

MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (DEC 2006)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below the micro-purchase threshold in Part 2 of the Federal Acquisition Regulation, under this contract or agreement.

(End of clause)

[65 FR 46626, July 31, 2000, as amended at 71 FR 75893, Dec. 19, 2006]

252.232–7010 Levies on Contract Payments.

As prescribed in 232.7102, use the following clause:

LEVIES ON CONTRACT PAYMENTS (DEC 2006)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

[70 FR 52032, Sept. 1, 2005, as amended at 71 FR 69492, Dec. 1, 2006]

252.232–7011 Payments in Support of Emergencies and Contingency Operations.

As prescribed in section 232.908, use the following clause:

PAYMENTS IN SUPPORT OF EMERGENCIES AND CONTINGENCY OPERATIONS (MAY 2013)

(a) Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation.

(b) Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer

(c) *Invoice payments.*

(1) *Due date.*

(i) Payment will be made as soon as possible once a proper invoice is received and matched with the contract and the receiving/acceptance report.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice should include the items listed in paragraphs (c)(2)(i) through (c)(2)(x) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (when required). The taxpayer identification number is required for all payees subject to the U.S. Internal Revenue Code.

(ix) Electronic funds transfer banking information.

(A) The Contractor shall include electronic funds transfer banking information on the invoice only if required elsewhere in this contract.

(B) If electronic funds transfer banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct electronic funds transfer banking information in accordance with the applicable solicitation provision (e.g., FAR 52.232–38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., FAR 52.232–33, Payment by Electronic Funds Transfer—System for Award Management, or FAR 52.232–34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) Electronic funds transfer banking information is not required if the Government waived the requirement to pay by electronic funds transfer.

(x) Any other information or documentation required by the contract (*e.g.*, evidence of shipment).

(3) *Discounts for prompt payment.* The designated payment office will take cost-effective discounts if the payment is made within the discount terms of the contract.

(4) *Contract financing payment.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment, including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact; and

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(d) This clause is applicable until otherwise notified by the Contracting Officer. Upon notification by issuance of a contract modification, the appropriate FAR Prompt Payment clause in the contract becomes applicable.

(End of clause)

[75 FR 40714, July 13, 2010, as amended at 78 FR 28758, May 16, 2013; 78 FR 30232, May 22, 2013]

252.233–7000 [Reserved]

252.233–7001 Choice of law (overseas).

As prescribed in 233.215–70, use the following clause:

CHOICE OF LAW (OVERSEAS) (JUN 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of

Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

[62 FR 34135, June 24, 1997]

252.234–7001 Notice of Earned Value Management System.

As prescribed in 234.203(1), use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (APR 2008)

(a) If the offeror submits a proposal in the amount of $50,000,000 or more—

(1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA–748.

(i) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract, and how the proposed EVMS complies with the EVMS guidelines in ANSI/EIA–748;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the EVMS guidelines;

(C) Describe the management system and its application in terms of the EVMS guidelines;

(D) Describe the proposed procedure for administration of the EVMS guidelines as applied to subcontractors; and

(E) Describe the process the offeror will use to determine subcontractor compliance with ANSI/EIA–748.

(ii) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(iii) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVMS will be compliant with the guidelines in ANSI/EIA–748.

(b) If the offeror submits a proposal in an amount less than $50,000,000—

(1) The offeror shall submit a written description of the management procedures it will use and maintain in the performance of any resultant contract to comply with the requirements of the Earned Value Management System clause of the contract. The description shall include—

(i) A matrix that correlates each guideline in ANSI/EIA–748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; and

(ii) The process the offeror will use to determine subcontractor compliance with ANSI/EIA–748.

(2) If the offeror proposes to use an EVMS that has been determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA–748, the offeror may submit a copy of the documentation of such determination instead of the written description required by paragraph (b)(1) of this provision.

(c) The offeror shall identify the subcontractors (or the subcontracted effort if subcontractors have not been selected) to whom the EVMS requirements will apply. The offeror and the Government shall agree to the subcontractors or the subcontracted effort selected for application of the EVMS requirements. The offeror shall be responsible for ensuring that the selected subcontractors comply with the requirements of the Earned Value Management System clause of the contract.

(End of provision)

[73 FR 21848, Apr. 23, 2008]

252.234–7002 Earned Value Management System.

As prescribed in 234.203(2), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAY 2011)

(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 $50 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 Contractor's 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 Contractor's EVMS plan.

(d) If this contract has a value of less than $50 million, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA–748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA–748 for application to future contracts. The Government will allow the use of a Contractor's 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 $50 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 Contractor's 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, on 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 $50 million or more, the following subcontractors shall comply with the requirements of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

_____

_____

_____

_____

(2) For subcontracts valued at less than $50 million, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

_____

_____

_____

_____

(End of clause)

[76 FR 28873, May 18, 2011]

252.234–7003 Notice of Cost and Software Data Reporting System. (NOV 2010)

As prescribed in 234–7101(a)(1), use the following provision:

NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2010)

(a) This solicitation includes—

(1) The Government-approved cost and software data reporting (CSDR) plan for the contract, DD Form 2794; and

(2) The related Resource Distribution Table.

(b) As part of its proposal, the offeror shall—

(1) Describe the process to be used to satisfy the requirements of the DoD 5000.04–M–1, CSDR Manual, and the Government-approved CSDR plan for the proposed contract;

(2) Demonstrate how contractor cost and data reporting (CCDR) will be based, to the maximum extent possible, upon actual cost transactions and not cost allocations;

(3) Demonstrate how the data from its accounting system will be mapped into the standard reporting categories required in the CCDR data item descriptions;

(4) Describe how recurring and nonrecurring costs will be segregated;

(5) Provide comments on the adequacy of the CSDR contract plan and related Resource Distribution Table; and

(6) Submit the DD Form 1921, Cost Data Summary Report, and DD Form 1921–1, Functional Cost-Hour Report, with its pricing proposal.

(c) CSDR reporting will be required for subcontractors at any tier with a subcontract that exceeds $50 million. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort in this category.

(End of provision)

Alternate I (NOV 2010). As prescribed in 234.7101(a)(2), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(c) CSDR reporting will be required for subcontractors for selected subcontracts identified in the CSDR contract plan as requiring such reporting. The offeror shall identify, by providing comments on the Resource Distribution Table, the subcontractors, or, if the subcontractors have not been selected, the subcontracted effort.

[75 FR 71562, Nov. 24, 2010]

252.234–7004 Cost and Software Data Reporting System. (NOV 2010)

As prescribed in 234.7101(b)(1), use the following clause:

COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2010)

(a) In the performance of this contract, the Contractor shall use—

(1) A documented standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04–M–1, CSDR Manual;

(2) Management procedures that provide for generation of timely and reliable information for the contractor cost data reports (CCDRs) and software resources data reports (SRDRs) required by the CCDR and SRDR data items of this contract; and

(3) The Government-approved CSDR plan for this contract, DD Form 2794, and the related Resource Distribution Table as the basis for reporting in accordance with the required CSDR data item descriptions.

(b) The Contractor shall require CSDR reporting from subcontractors at any tier with a subcontract that exceeds $50 million. If, for subcontracts that exceed $50 million, the Contractor changes subcontractors or makes new subcontract awards, the Contractor shall notify the Government.

(End of clause)

Alternate I (NOV 2010). As prescribed in 234.7101(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall require CSDR reporting from selected subcontractors identified in the CSDR contract plan as requiring such reporting. If the Contractor changes subcontractors or makes new awards for selected subcontract effort, the Contractor shall notify the Government.

[75 FR 71562, Nov. 24, 2010]

252.235–7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed in 235.070–3, use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—FIXED PRICE (DEC 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term *third persons* includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) *Notice*. The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) *Flowdown*. The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor

under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235–7001 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed in 235.070–3, use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—COST REIMBURSEMENT (DEC 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term ''third persons'' includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) *Notice*. The Insurance—Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown*. The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235–7002 Animal welfare.

As prescribed in 235.072(a), use the following clause:

ANIMAL WELFARE (DEC 2011)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR subpart C, and §2.30, and furnish evidence of such registration to the Contracting Officer before beginning work under this contract.

(b) The Contractor shall acquire animals only from dealers licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR subpart A, §§2.1 through 2.11, or from sources that are exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and regulations of the Department of Agriculture (see 7 U.S.C. 2131 *et seq.* and 9 CFR subchapter A, parts 1 through 4).

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and removal of the Contractor's name from the list of contractors with approved Public Health Service Welfare Assurances.

(e) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), for the region in which its research facility is located. The location of the appropriate APHIS regional office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts involving research of live vertebrate animals.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 73 FR 42279, July 21, 2008; 76 FR 76321, Dec. 7, 2011]

252.235–7003 Frequency authorization.

As prescribed in 235.072(b), use the following clause:

FREQUENCY AUTHORIZATION (DEC 1991)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

Alternate I (AUG 2008). Substitute the following paragraph (c) for paragraph

(c) of the basic clause if agency procedures authorize use of DD Form 1494, Application for Equipment Frequency Allocation:

(c) The Contractor shall use DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

[56 FR 36479, July 31, 1991, as amended at 73 FR 42279, July 21, 2008]

252.235–7004 Protection of Human Subjects.

As prescribed in 235.072(e), use the following clause:

PROTECTION OF HUMAN SUBJECTS (JUL 2009)

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

(1) *Assurance of compliance* means a written assurance that an institution will comply with requirements of 32 CFR Part 219, as well as the terms of the assurance, which the Human Research Protection Official determines to be appropriate for the research supported by the Department of Defense (DoD) component (32 CFR 219.103).

(2) *Human Research Protection Official (HRPO)* means the individual designated by the head of the applicable DoD component and identified in the component's Human Research Protection Management Plan as the official who is responsible for the oversight and execution of the requirements of this clause, although some DoD components may use a different title for this position.

(3) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or identifiable private information (32 CFR 219.102(f)). For example, this could include the use of human organs, tissue, and body fluids from individually identifiable living human subjects as well as graphic, written, or recorded information derived from individually identifiable living human subjects.

(4) *Institution* means any public or private entity or agency (32 CFR 219.102(b)).

(5) *Institutional Review Board (IRB)* means a board established for the purposes expressed in 32 CFR Part 219 (32 CFR 219.102(g)).

(6) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements (32 CFR 219.102(h)).

(7) *Research* means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of 32 CFR Part 219, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities (32 CFR 219.102(d)).

(b) The Contractor shall oversee the execution of the research to ensure compliance with this clause. The Contractor shall comply fully with 32 CFR Part 219 and DoD Directive 3216.02, applicable DoD component policies, 10 U.S.C. 980, and, when applicable, Food and Drug Administration policies and regulations.

(c) The Contractor shall not commence performance of research involving human subjects that is covered under 32 CFR Part 219 or that meets exemption criteria under 32 CFR 219.101(b), or expend funding on such effort, until and unless the conditions of either the following paragraph (c)(1) or (c)(2) have been met:

(1) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, an assurance of compliance and IRB approval and receives notification from the Contracting Officer that the HRPO has approved the assurance as appropriate for the research under the Statement of Work and also that the HRPO has reviewed the protocol and accepted the IRB approval for compliance with the DoD component policies. The Contractor may furnish evidence of an existing assurance of compliance for acceptance by the HRPO, if an appropriate assurance has been approved in connection with previous research. The Contractor shall notify the Contracting Officer immediately of any suspensions or terminations of the assurance.

(2) The Contractor furnishes to the HRPO, with a copy to the Contracting Officer, a determination that the human research proposed meets exemption criteria in 32 CFR 219.101(b) and receives written notification from the Contracting Officer that the exemption is determined acceptable. The determination shall include citation of the exemption category under 32 CFR 219.101(b) and a rationale statement. In the event of a disagreement regarding the Contractor's furnished exemption determination, the HRPO retains final judgment on what research activities or classes of research are covered or are exempt under the contract.

(d) DoD staff, consultants, and advisory groups may independently review and inspect the Contractor's research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD procedures.

(e) Failure of the Contractor to comply with the requirements of this clause will result in the issuance of a stop-work order under Federal Acquisition Regulation clause 52.242–15 to immediately suspend, in whole or

in part, work and further payment under this contract, or will result in other issuance of suspension of work and further payment for as long as determined necessary at the discretion of the Contracting Officer.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). This clause does not apply to subcontracts that involve only the use of cadaver materials.

(End of clause)

[74 FR 37648, July 29, 2009]

252.235–7005—252.235–7009 [Reserved]

252.235–7010 Acknowledgment of support and disclaimer.

As prescribed in 235.072(c), use the following clause:

ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

[60 FR 29503, June 5, 1995, as amended at 73 FR 42279, July 21, 2008]

252.235–7011 Final scientific or technical report.

As prescribed in 235.072(d), use the following clause:

FINAL SCIENTIFIC OR TECHNICAL REPORT (NOV 2004)

The Contractor shall—

(a) Submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center, Attn: DTIC-O, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6218;

(b) Include a completed Standard Form 298, Report Documentation Page, with each copy of the report; and

(c) For submission of reports in other than paper copy, contact the Defense Technical Information Center or follow the instructions at *http://www.dtic.mil*.

(End of clause)

[69 FR 65092, Nov. 10, 2004, 1991, as amended at 73 FR 42279, July 21, 2008]

252.236–7000 Modification proposals—price breakdown.

As prescribed in 236.570(a), use the following clause:

MODIFICATION PROPOSALS—PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

252.236–7001 Contract drawings and specifications.

As prescribed in 236.570(a), use the following clause:

CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general—

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File Drawing No.

(End of clause)

[65 FR 50152, Aug. 17, 2000]

252.236–7002 Obstruction of navigable waterways.

As prescribed in 236.570(b)(1), use the following clause:

OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 *et seq.*).

(End of clause)

252.236–7003 Payment for mobilization and preparatory work.

As prescribed in 236.570(b)(2), use the following clause:

PAYMENT FOR MOBILIZATION AND PREPARATORY WORK (JAN 1997)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no. _____.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

(ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and

(iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e) (1) Payments will continue to be made for item no. _____, and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer's determinations are not subject to appeal.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997]

252.236–7004 Payment for mobilization and demobilization.

As prescribed in 236.570(b)(2), use the following clause:

PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) _____ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining _____ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of clause)

252.236–7005 Airfield safety precautions.

As prescribed in 236.570(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

AIRFIELD SAFETY PRECAUTIONS (DEC 1991)

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

(1) *Landing areas* means—

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The *clear zone* beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) *Safety precaution areas* means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) The *approach-departure clearance surface* is an extension of the primary surface and the clear zone at each end of each runway,

for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The *approach-departure clearance zone* is the ground area under the approach-departure clearance surface.

(iii) The *transitional surface* is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the—

(*1*) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(*2*) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(iv) The ''transitional zone'' is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) *General.* (1) The Contractor shall comply with the requirements of this clause while—

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall—

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is—

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations—

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) *Landing areas.* The Contractor shall—

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(e) *Safety precaution areas.* The Contractor shall—

(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

252.236–7006 Cost limitation.

As prescribed in 236.570(b)(4), use the following provision:

COST LIMITATION (JAN 1997)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which—

(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2615, Jan. 17, 1997]

252.236–7007 Additive or deductive items.

As prescribed in 236.570(b)(5), use the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (DEC 1991)

(a) The low offeror and the items to be awarded shall be determined as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low offeror shall be the Offeror that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) *Example.* The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B's base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.

(End of provision)

252.236–7008 Contract prices—bidding schedules.

As prescribed in 236.570(b)(6), use the following provision:

CONTRACT PRICES—BIDDING SCHEDULES (DEC 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for—

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

(End of provision)

252.236–7009 Option for supervision and inspection services.

As prescribed in 236.609–70, use the following clause:

OPTION FOR SUPERVISION AND INSPECTION SERVICES (DEC 1991)

(a) The Government may—

(1) At its option, direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract as provided under appendix A of this contract; and

(2) Exercise its option, by written order, at any time prior to six months after satisfactory completion and acceptance of the work under this contract.

(b) Upon receipt of the Contracting Officer's written order, the Contractor shall proceed with the supervision and inspection services.

(End of clause)

252.236–7010 Overseas military construction—Preference for United States firms.

As prescribed in 236.570(c)(1), use the following provision:

OVERSEAS MILITARY CONSTRUCTION—PREFERENCE FOR UNITED STATES FIRMS (JAN 1997)

(a) *Definition.* ''United States firm,'' as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Evaluation.* Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) *Status.* The offeror _____ is, _____ is not a United States firm.

(End of provision)

[62 FR 2857, Jan. 17, 1997, as amended at 63 FR 11549, Mar. 9, 1998]

252.236–7011 Overseas architect-engineer services—Restriction to United States firms.

As prescribed in 236.609–70(b), use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES—RESTRICTION TO UNITED STATES FIRMS (JAN 1997)

(a) *Definition. United States firm,* as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 12 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

[62 FR 2858, Jan. 17, 1997]

252.236–7012 Military construction on Kwajalein Atoll—evaluation preference.

As prescribed in 236.570(c)(2), use the following provision:

MILITARY CONSTRUCTION ON KWAJALEIN ATOLL—EVALUATION PREFERENCE (MAR 1998)

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

(1) *Marshallese firm* means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that—

(i) Is more than 50 percent owned by citizens of the Marshall Islands; or

(ii) Complies with the following:

(A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;

(B) Substantially all of the firm's directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) *United States firm* means a firm incorporated in the United States that complies with the following:

(i) The corporate headquarters are in the United States;

(ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(iii) The firm employs United States citizens in key management positions.

(b) *Evaluation*. Offers from firms that do not qualify as United States firms or Marshallese firms will be evaluated by adding 20 percent to the offer, unless application of the factor would not result in award to a United States firm.

(c) *Status*. The offeror is _____ a United States firm; _____ a Marshallese firm; _____ Other.

(End of provision)

[63 FR 11549, Mar. 9, 1998]

252.236–7013 Requirement for competition opportunity for American steel producers, fabricators, and manufacturers.

As prescribed in 236.570(d), use the following clause:

Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (JUN 2013JAN 2009)

(a) *Definition*. *Construction material*, as used in this clause, means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work.

(b) The Contractor shall provide American steel producers, fabricators, and manufacturers the opportunity to compete when acquiring steel as a construction material (e.g., steel beams, rods, cables, plates).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial items.

(End of clause)

[74 FR 2418, Jan. 15, 2009, as amended at 78 FR 37990, June 25, 2013]

252.237–7000 Notice of special standards of responsibility.

As prescribed in 237.270(d)(1), use the following provision:

NOTICE OF SPECIAL STANDARDS OF RESPONSIBILITY (DEC 1991)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104–1 and the following criteria, as described in Chapter 3, General Standards, of ''Government Auditing Standards.''

(1) Qualifications;

(2) Independence; and

(3) Quality Control.

(b) ''Government Auditing Standards'' is issued by the Comptroller General of the United States and is available for sale from the: Superintendent of Documents, U.S. Government Printing Office. Washington, DC 20401, Stock number 020–000–00243–3.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 66 FR 49861, Oct. 1, 2001]

252.237–7001 Compliance with audit standards.

As prescribed in 237.270(d)(2), use the following clause:

COMPLIANCE WITH AUDIT STANDARDS (MAY 2000)

The Contractor, in performance of all audit services under this contract, shall comply with ''Government Auditing Standards'' issued by the Comptroller General of the United States.

(End of clause)

[65 FR 32041, May 22, 2000]

252.237–7002 Award to single offeror.

As prescribed in 237.7003(a), use the following provision:

AWARD TO SINGLE OFFEROR (DEC 1991)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

Alternate I (DEC 1991). As prescribed in 237.7003(a), substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7003 Requirements.

As prescribed in 237.7003(b), use the following clause:

REQUIREMENTS (DEC 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

(2) The quantities to be furnished;

(3) Delivery or performance dates;

(4) Place of delivery or performance;

(5) Packing and shipping instructions;

(6) The address to send invoices; and

(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

_____

_____

_____

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7004 Area of performance.

As prescribed in 237.7003(b), use the following clause:

AREA OF PERFORMANCE (DEC 1991)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7005 Performance and delivery.

As prescribed in 237.7003(b), use the following clause:

PERFORMANCE AND DELIVERY (DEC 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7006 Subcontracting.

As prescribed in 237.7003(b), use the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7007 Termination for default.

As prescribed in 237.7003(b), use the following clause:

TERMINATION FOR DEFAULT (DEC 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7008 Group interment.

As prescribed in 237.7003(b), use the following clause:

GROUP INTERMENT (DEC 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7009 Permits.

As prescribed in 237.7003(b), use the following clause:

PERMITS (DEC 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7010 Prohibition on interrogation of detainees by contractor personnel.

As prescribed in 237.173–5, use the following clause:

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL ((JUN 2013))

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

Detainee means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

Interrogation of detainees means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

(b) Contractor personnel shall not interrogate detainees.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

[75 FR 67634, Nov. 3, 2010, as amended at 78 FR 37991, June 25, 2013]

252.237–7011 Preparation history.

As prescribed in 237.7003(b), use the following clause:

PREPARATION HISTORY (DEC 1991)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7012 Instruction to offerors (count-of-articles).

As prescribed in 237.7101(a), use the following provision:

INSTRUCTION TO OFFERORS (COUNT-OF-ARTICLES) (DEC 1991)

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate offers based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7013 Instruction to offerors (bulk weight).

As prescribed in 237.7101(b), use the following provision:

INSTRUCTION TO OFFERORS (BULK WEIGHT) (DEC 1991)

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7014 Loss or damage (count-of-articles).

As prescribed in 237.7101(c), use the following clause:

LOSS OR DAMAGE (COUNT-OF-ARTICLES) (DEC 1991)

(a) The count-of-articles will be—

(1) The count of the Contracting Officer; or

(2) The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall—

(1) Be liable for return of the number and kind of articles furnished for service under this contract; and

(2) Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7015 Loss or damage (weight of articles).

As prescribed in 237.7101(d), use the following clause:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (DEC 1991)

(a) The Contractor shall—

(1) Be liable for return of the articles furnished for service under this contract; and

(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government _____ per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is _____ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7016 Delivery tickets.

As prescribed in 237.7101(e), use the following clause:

DELIVERY TICKETS (DEC 1991)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

Alternate I (DEC 1991). As prescribed in 237.7101(e)(1), add the following paragraphs (c), (d), and (e) to the basic clause:

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

Alternate II (DEC 1991). As prescribed in 237.7101(e)(2), add the following paragraphs (c), (d), and (e) to the basic clause—

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7017 Individual laundry.

As prescribed in 237.7101(f), use the following clause:

INDIVIDUAL LAUNDRY (DEC 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the ''Estimated Quantity'' column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual

laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows—

(1) *Bundle consisting of 26 pieces, including laundry bag.* This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(2) *Bundle consisting of 13 pieces, including laundry bag.* This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7018 Special definitions of Government property.

As prescribed in 237.7101(g), use the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (DEC 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 71 FR 3416, Jan. 23, 2006]

252.237–7019 Training for Contractor Personnel Interacting with Detainees.

As prescribed in 237.171–4, use the following clause:

TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES (JUN 2013)

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

Combatant Commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Detainee means a person in the custody or under the physical control of the Department of Defense on behalf of the United States Government as a result of armed conflict or other military operation by United States armed forces.

Personnel interacting with detainees means personnel who, in the course of their duties, are expected to interact with detainees.

(b) *Training requirement.* This clause implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

(1) The Combatant Commander responsible for the area where a detention or interrogation facility is located will arrange for training to be provided to contractor personnel interacting with detainees. The training will address the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions. The Combatant Commander will arrange for a training receipt document to be provided to personnel who have completed the training.

(2)(i) The Contractor shall arrange for its personnel interacting with detainees to—

(A) Receive the training specified in paragraph (b)(1) of this clause—

(*1*) Prior to interacting with detainees, or as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training; and

(*2*) Annually thereafter; and

(B) Provide a copy of the training receipt document specified in paragraph (b)(1) of this clause to the Contractor for retention.

(ii) To make these arrangements, the following points of contact apply:

[Contracting Officer to insert applicable point of contact information cited in PGI 237.171–3(b).]

(3) The Contractor shall retain a copy of the training receipt document(s) provided in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed, or 3 years after all work required by the contract has been completed and accepted by the Government, whichever is sooner.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

[70 FR 52034, Sept. 1, 2005, as amended at 71 FR 53049, Sept. 8, 2006; 78 FR 37991, June 25, 2013]

252.237–7020—252.237–7021 [Reserved]

252.237–7022 Services at installations being closed.

As prescribed in 237.7402, use the following clause:

SERVICES AT INSTALLATIONS BEING CLOSED (MAY 1995)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of such government.

(End of clause)

[59 FR 36090, July 15, 1994, as amended at 60 FR 29503, June 5, 1995]

252.237–7023 Continuation of Essential Contractor Services.

As prescribed in 237.7603(a), use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

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

(1) *Essential contractor service* means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

(2) *Mission-essential functions* means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect DoD's ability to provide vital services or exercise authority, direction, and control.

(b) The Government has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission-essential functions. These services are listed in attachment __, Mission-Essential Contractor Services, dated _____.

(c)(1) The Mission-Essential Contractor Services Plan submitted by the Contractor, is incorporated in this contract.

(2) The Contractor shall maintain and update its plan as necessary. The Contractor shall provide all plan updates to the Contracting Officer for approval.

(3) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(d)(1) Notwithstanding any other clause of this contract, the Contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the Contracting Officer), in accordance with its Mission-Essential Contractor Services Plan.

(2) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in accordance with paragraph (b) of this clause during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(e) The Government reserves the right in such crisis situations to use Federal employees, military personnel, or contract support from other contractors, or to enter into new contracts for essential contractor services.

(f) *Changes*. The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor's notice shall include the Contractor's proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price, delivery schedule, or both as soon as is practicable after receipt of the Contractor's proposal.

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in subcontracts for the essential services.

(End of clause)

[75 FR 66682, Oct. 29, 2010]

252.237–7024 Notice of Continuation of Essential Contractor Services.

As prescribed in 237.7603(b), use the following provision:

NOTICE OF CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) *Definitions. Essential contractor service* and *mission-essential functions* have the meanings given in the clause at 252.237–7023, Continuation of Essential Contractor Services, in this solicitation.

(b) The offeror shall provide with its offer a written plan describing how it will continue to perform the essential contractor services listed in attachment __, Mission Essential Contractor Services, dated _____, during periods of crisis. The offeror shall—

(1) Identify provisions made for the acquisition of essential personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) Address in the plan, at a minimum—

(i) Challenges associated with maintaining essential contractor services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of essential personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home;

(iv) Any established alert and notification procedures for mobilizing identified ''essential contractor service'' personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(End of provision)

[75 FR 66683, Oct. 29, 2010]

252.239–7000 Protection against compromising emanations.

As prescribed in 239.7103(a), use the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (JUN 2004)

(a) The Contractor shall provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSEM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standards specified by this contract, including the date through which the required accreditation is current or valid for the contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that information technology delivered under this contract satisfies the information assurance standards specified. The Government may conduct additional tests—

(1) At the installation site or contractor's facility; and

(2) Notwithstanding the existence of valid accreditations of information technology prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clause, the Contractor shall correct or replace accepted information technology found to be deficient within 1 year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered information technology be made by the Contractor, the 1-year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient information technology.

(End of clause)

[69 FR 35535, June 25, 2004, as amended at 73 FR 1829, Jan. 10, 2008]

252.239–7001 Information Assurance Contractor Training and Certification.

As prescribed in 239.7103(b), use the following clause:

INFORMATION ASSURANCE CONTRACTOR TRAINING AND CERTIFICATION (JAN 2008)

(a) The Contractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoD 8570.01–M, Information Assurance Workforce Improvement Program. The Contractor shall meet the applicable information assurance certification requirements, including—

(1) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoD 8570.01–M; and

(2) Appropriate operating system certification for information assurance technical positions as required by DoD 8570.01–M.

(b) Upon request by the Government, the Contractor shall provide documentation supporting the information assurance certification status of personnel performing information assurance functions.

(c) Contractor personnel who do not have proper and current certifications shall be denied access to DoD information systems for the purpose of performing information assurance functions.

(End of clause)

[73 FR 1829, Jan. 10, 2008]

252.239–7002 Access.

As prescribed in 239.7411(a), use the following clause:

ACCESS (DEC 1991)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to Contractor furnished facilities. However, if the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when the Government does not permit Contractor access, the Government will reimburse the Contractor at mutually acceptable rates for the loss of or damage to the equipment due to the fault or negligence of the Government. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239–7003 [Reserved]

252.239–7004 Orders for facilities and services.

As prescribed in 239.7411(a), use the following clause:

ORDERS FOR FACILITIES AND SERVICES (NOV 2005)

The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(a) Commencing performance; or

(b) Written acceptance by a duly authorized representative.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 70 FR 67919, Nov. 9, 2005]

252.239–7005 Rates, charges, and services.

As prescribed in 239.7411(a), use the following clause:

RATES, CHARGES, AND SERVICES (NOV 2005)

(a) *Definition—Governmental regulatory body* means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not ''governmental regulatory bodies.''

(b) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with—

(1) All applicable tariffs, rates, charges, rules, regulations, or requirements;

(i) Lawfully established by a governmental regulatory body; and

(ii) Applicable to service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers;

(2) Rates, terms, and conditions of service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(3) Rates, terms, and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of a governmental regulatory body.

(c) The Government shall not prepay for services.

(d) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(e) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(f) Subject to the Cancellation or Termination of Orders clause, of this agreement/contract, the Government may stop the use of any service or facilities furnished under this agreement/contract at any time. The Government shall pay the contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 70 FR 67919, Nov. 9, 2005]

252.239–7006 Tariff information.

As prescribed in 239.7411(a), use the following clause:

TARIFF INFORMATION (JUL 1997)

(a) The Contractor shall provide to the Contracting Officer—

(1) Upon request, a copy of the Contractor's current existing tariffs (including changes);

(2) Before filing, any application to a Federal, State, or any other regulatory agency for new or changes to, rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government; and

(3) Upon request, a copy of all information, material, and data developed or prepared in support of or in connection with an application under paragraph (a)(2) of this clause.

(b) The Contractor shall notify the Contracting Officer of any application that anyone other than the Contractor files with a governmental regulatory body which affects or will affect the rate or conditions of services under this agreement/contract. These requirements also apply to applications pending on the effective date of this agreement/contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 40473, July 29, 1997]

252.239–7007 Cancellation or termination of orders.

As prescribed in 239.7411(a), use the following clause:

CANCELLATION OR TERMINATION OF ORDERS (NOV 2005)

(a) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges which—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Rates, Charges, and Services clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(c) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(d) If no applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures—

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to

take title under the title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) less any costs the Government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract. Deduct from the Contractor's installed cost, the net salvage value (salvage value less cost of removal). In determining net salvage value, give consideration to foreseeable reuse of the facilities and equipment by the Contractor. Make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The Basic Cancellation Liability is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are cancelled. The Basic Termination Liability is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. Establish the liability period as mutually agreed to but not to exceed ten years.

(6) When the Basic Cancellation or Termination Liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvagable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(e) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this agreement/contract. The Government may make these payments if in the opinion of the Contracting Officer the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2615, Jan. 17, 1997; 70 FR 67919, Nov. 9, 2005]

252.239–7008 Reuse arrangements.

As prescribed in 239.7411(a), use the following clause:

REUSE ARRANGEMENTS (DEC 1991)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under the Cancellation or Termination of Orders-Common Carriers clause of this agreement/contract. The Basic Termination Liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and the Basic Cancellation or Termination Liability shall be appropriately reduced. When feasible, the Contractor shall

promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

252.239–7009—252.239–7010 [Reserved]

252.239–7011 Special construction and equipment charges.

As prescribed in 239.7411(b), use the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (DEC 1991)

(a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.

(b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government's contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any credit.

(c) The amount of the direct special construction charge shall not exceed—

(1) The actual costs to the Contractor; and

(2) An amount properly allocable to the services to be provided to the Government.

(d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by—

(1) A cancellation or termination liability; or

(2) The Contractor's recurring or other nonrecurring charges.

(e) The Contractor represents that—

(1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and

(2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.

(f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances—

(1) The Government paid direct special construction charges; or

(2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and

(3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.

(g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.

(End of clause)

252.239–7012 Title to telecommunication facilities and equipment.

As prescribed in 239.7411(b), use the following clause:

TITLE TO TELECOMMUNICATION FACILITIES AND EQUIPMENT (DEC 1991)

(a) Title to all Contractor furnished facilities and equipment used under this agreement/contract shall remain with the Contractor even if the Government paid the costs of constructing the facilities or equipment. A mutually accepted communications service authorization may provide for exceptions.

(b) The Contractor shall operate and maintain all telecommunication facilities and equipment used under this agreement/contract whether the Government or the Contractor has title.

(End of clause)

252.239–7013 Obligation of the Government.

As prescribed in 239.7411(c), use the following clause:

OBLIGATION OF THE GOVERNMENT (JUL 2006)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communication service authorization, which is the contract and incorporates the terms of this agreement.

(End of clause)

[71 FR 39011, July 11, 2006]

252.239–7014 Term of agreement.

As prescribed in 239.7411(c), use the following clause:

TERM OF AGREEMENT (DEC 1991)

(a) This agreement shall continue in force from year to year, unless terminated by either party by 60 days written notice.

(b) Termination of this agreement does not cancel any communication service authorizations previously issued.

(End of clause)

252.239–7015 Continuation of communication service authorizations.

As prescribed in 239.7411(c), use the following clause:

CONTINUATION OF COMMUNICATION SERVICE AUTHORIZATIONS (JUL 2006)

(a) All communication service authorizations issued by_____incorporating Basic Agreement Number _____, dated _____, are modified to incorporate this basic agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause incorporating other agreements with the Contractor may also be modified to incorporate this agreement.

(c) This basic agreement is not a contract.

(End of clause)

[71 FR 39011, July 11, 2006]

252.239–7016 Telecommunications security equipment, devices, techniques, and services.

As prescribed in 239.7411(d), use the following clause:

TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991)

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

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

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

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

(i) Classified or sensitive information;

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

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

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: (Identify the location.)

(c) To provide the security, the Contractor shall use Government-approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from (identify where list can be obtained). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with (list and identify the location of any telecommunications security equipment, device, technique, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

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

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

(End of clause)

252.241–7000 Superseding contract.

As prescribed in 241.501–70(a), use the following clause:

SUPERSEDING CONTRACT (DEC 1991)

This contract supersedes contract No. _____, dated ____ which provided similar services. Any capital credits accrued to the Government, any remaining credits due to the Government under the connection charge, or any termination liability are transferred to this contract, as follows:

CAPITAL CREDITS

(List years and accrued credits by year and separate delivery points.)

OUTSTANDING CONNECTION CHARGE CREDITS

(List by month and year the amount credited and show the remaining amount of outstanding credits due the Government.)

TERMINATION LIABILITY CHARGES

(List by month and year the amount of monthly facility cost recovered and show the remaining amount of facility cost to be recovered.)

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 63 FR 11549, Mar. 9, 1998]

252.241–7001 Government access.

As prescribed in 241.501–70(b), use the following clause:

GOVERNMENT ACCESS (DEC 1991)

Authorized representatives of the Government may have access to the Contractor's on-base facilities upon reasonable notice or in case of emergency.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 63 FR 11549, Mar. 9, 1998]

252.242–7000—252.242–7002 [Reserved]

252.242–7004 Material Management and Accounting System.

As prescribed in 242.7204, use the following clause:

MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (MAY 2011)

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

(1) *Material management and accounting system (MMAS)* means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be standalone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) *Valid time-phased requirements* means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, *etc.;* and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) *Contractor* means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(4) *Acceptable material management and accounting system* means a MMAS that generally complies with the system criteria in paragraph (d) of this clause.

(5) *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) *General.* The Contractor shall—

(1) Maintain an MMAS that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) *Disclosure and maintenance requirements.* The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately describe its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) *System criteria.* The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions, such as excess/residual inventory, as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine-readable form) necessary to evaluate system

logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The ''loan/pay-back technique'' means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (d)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (d)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(e) *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 MMAS. 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; and

(iii) System disapproval if the Contracting Officer determines that one or more significant deficiencies remain.

(f) 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.

(g) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's MMAS, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

[76 FR 28874, May 18, 2011]

252.242–7005 Contractor business systems.

As prescribed in 242.7001, use the following clause:

CONTRACTOR BUSINESS SYSTEMS (FEB 2012)

(a) This clause only applies to covered contracts that are subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix).

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

Acceptable contractor business systems means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of ''contractor business systems'' in this clause.

Contractor business systems means—

(1) Accounting system, if this contract includes the clause at 252.242–7006, Accounting System Administration;

(2) Earned value management system, if this contract includes the clause at 252.234–7002, Earned Value Management System;

(3) Estimating system, if this contract includes the clause at 252.215–7002, Cost Estimating System Requirements;

(4) Material management and accounting system, if this contract includes the clause at 252.242–7004, Material Management and Accounting System;

(5) Property management system, if this contract includes the clause at 252.245–7003, Contractor Property Management System Administration; and

(6) Purchasing system, if this contract includes the clause at 252.244–7001, Contractor Purchasing System Administration.

Significant deficiency, in the case of a contractor business system, 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.

(c) *General.* The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract.

(d) *Significant deficiencies.* (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice to withhold payments.

(e) *Withholding payments.* (1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will withhold five percent of amounts due from progress payments and performance-based payments, and direct the Contractor, in writing, to withhold five percent from its billings on interim cost vouchers on cost-reimbursement, labor-hour, and time-and-materials contracts until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will reduce withholding directly related to the significant deficiencies covered under the corrective action plan, to two percent from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the percentage withheld on interim cost vouchers to two percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(3) *Payment withhold percentage limits.*

(i) The total percentage of payments withheld on amounts due under each progress payment, performance-based payment, or interim cost voucher, on this contract shall not exceed—

(A) Five percent for one or more significant deficiencies in any single contractor business system; and

(B) Ten percent for significant deficiencies in multiple contractor business systems.

(ii) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (e)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an

amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means any of the following payments authorized under this contract:

(i) Interim payments under—

(A) Cost-reimbursement contracts;

(B) Incentive type contracts;

(C) Time-and-materials contracts;

(D) Labor-hour contracts.

(ii) Progress payments.

(iii) Performance-based payments.

(5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.

(6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.

(7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.

(8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(f) *Correction of deficiencies.* (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.

(2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will, as appropriate, discontinue the withholding of progress payments and performance-based payments, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.

(ii) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contracting Officer will continue the withholding of progress payments and performance-based payments, and the Contractor shall continue withholding amounts from its billings on interim cost vouchers n accordance with paragraph (e) of this clause, and not bill for any monies previously withheld.

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will reduce withholding directly related to the significant deficiencies identified in the Contractor notification by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the payment withholding from billings on interim cost vouchers directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.

(v) At any time after the Contracting Officer reduces or discontinues the withholding of progress payments and performance-based payments, or directs the Contractor to reduce or discontinue the payment withholding from billings on interim cost vouchers under this contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to reinstate or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(End of clause)

[76 FR 28875, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012]

252.242–7006 Accounting system administration.

As prescribed in 242.7503, use the following clause:

ACCOUNTING SYSTEM ADMINISTRATION (FEB 2012)

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

(1) *Acceptable accounting system* means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with billing procedures.

(2) *Accounting system* means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

(3) *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) *General.* The Contractor shall establish and maintain an acceptable accounting system. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the clause at 252.242–7005, Contractor Business Systems, and also may result in disapproval of the system.

(c) *System criteria.* The Contractor's accounting system shall provide for—

(1) A sound internal control environment, accounting framework, and organizational structure;

(2) Proper segregation of direct costs from indirect costs;

(3) Identification and accumulation of direct costs by contract;

(4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;

(5) Accumulation of costs under general ledger control;

(6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;

(7) Approval and documentation of adjusting entries;

(8) Management reviews or internal audits of the system to ensure compliance with the Contractor's established policies, procedures, and accounting practices;

(9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;

(10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;

(11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;

(12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of Federal Acquisition Regulation (FAR) part 31, Contract Cost Principles and Procedures, and other contract provisions;

(13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;

(14) Segregation of preproduction costs from production costs, as applicable;

(15) Cost accounting information, as required—

(i) By contract clauses concerning limitation of cost (FAR 52.232–20), limitation of funds (FAR 52.232–22), or allowable cost and payment (FAR 52.216–7); and

(ii) To readily calculate indirect cost rates from the books of accounts;

(16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;

(17) Adequate, reliable data for use in pricing follow-on acquisitions; and

(18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on 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 accounting system. 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; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) 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.

(f) *Withholding payments*. If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

[76 FR 28877, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012]

252.243–7000 [Reserved]

252.243–7001 Pricing of contract modifications.

As prescribed in 243.205–70, use the following clause:

PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 66 FR 49865, Oct. 1, 2001]

252.243–7002 Requests for equitable adjustment.

As prescribed in 243.205–71, use the following clause:

REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2012)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

_____

(Official's Name)

_____

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—

(1) Certified cost or pricing data if required in accordance with subsection 15.403–4 of the Federal Acquisition Regulation (FAR); and

(2) Data other than certified cost or pricing data, in accordance with subsection 15.403–3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to—

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

(End of clause)

[63 FR 11549, Mar. 9, 1998, as amended at 66 FR 49865, Oct. 1, 2001; 77 FR 76941, Dec. 31, 2012]

252.244–7000 Subcontracts for Commercial Items.

As prescribed in 244.403, use the following clause: SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013)

(a) The Contractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial items at any tier under this contract, unless so specified in the particular clause.

(b) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligation.

(c) 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 items.

(End of clause)

[78 FR 37991, June 25, 2013]

252.244–7001 Contractor purchasing system administration.

As prescribed in 244.305–71, insert the following clause:

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (JUN 2012)

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

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

Purchasing system means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

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) *General*. The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria*. The Contractor's purchasing system shall—

(1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);

(2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(3) Maintain an organization plan that establishes clear lines of authority and responsibility;

(4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

(5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(6) Apply a consistent make-or-buy policy that is in the best interest of the Government;

(7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

(8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;

(9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

(10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;

(11) Document negotiations in accordance with FAR 15.406–3;

(12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

(13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;

(14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

(15) Document and justify reasons for subcontract changes that affect cost or price;

(16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably

priced and from sources that meet contractor quality requirements;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of 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 purchasing system. 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; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) 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 deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

[76 FR 28877, May 18, 2011, as amended at 77 FR 35882, June 15, 2012]

252.245–7000 Government-furnished mapping, charting, and geodesy property.

As prescribed in 245.107(1), use the following clause:

GOVERNMENT-FURNISHED MAPPING, CHARTING, AND GEODESY PROPERTY (APR 2012)

(a) *Definition—Mapping, charting, and geodesy (MC&G) property* means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) The Contractor shall not duplicate, copy, or otherwise reproduce MC&G property for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the Contractor, as directed by the Contracting Officer, shall either destroy or return to the Government all Government-furnished MC&G property not consumed in the performance of this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 74 FR 37648, July 29, 2009; 76 FR 6006, Feb. 2, 2011; 77 FR 23632, Apr. 20, 2012]

252.245–7001 Tagging, labeling, and marking of government-furnished property

As prescribed in 245.107(2), use the following clause:

TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012)

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

Government-furnished property is defined in the clause at FAR 52.245–1, Government Property.

Serially-managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

(b) The Contractor shall tag, label, or mark Government-furnished property items

identified in the contract as subject to serialized item management (serially-managed items).

(c) The Contractor is not required to tag, label, or mark Government-furnished property previously tagged, labeled, or marked.

(End of clause)

[76 FR 6006, Feb. 2, 2011, as amended at 77 FR 23632, Apr. 20, 2012]

252.245–7002 Reporting Loss of Government Property.

As prescribed in 245.107(3), use the following clause:

REPORTING LOSS OF GOVERNMENT PROPERTY (APR 2012)

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

Government property is defined in the clause at FAR 52.245–1, Government Property.

Loss of Government property means unintended, unforeseen, or accidental loss, damage, or destruction of Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear, or manufacturing defects. Loss of Government property includes, but is not limited to—

(1) Items that cannot be found after a reasonable search;

(2) Theft;

(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

Unit acquisition cost means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For Contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied, generally acceptable accounting principles.

(b) *Reporting loss of Government property.* (1) The Contractor shall use the Defense Contract Management Agency (DCMA) eTools software application for reporting loss of Government property. Reporting value shall be at unit acquisition cost. The eTools ''LTDD of Government Property'' toolset can be accessed from the DCMA home page External Web Access Management application at *http://www.dcma.mil/aboutetools.cfm.*

(2) Unless otherwise provided for in this contract, the requirements of paragraph (b)(1) of this clause do not apply to normal and reasonable inventory adjustments, *i.e.,* losses of low-risk consumable material such as common hardware, as agreed to by the Contractor and the Government Property Administrator. Such losses are typically a product of normal process variation. The Contractor shall ensure that its property management system provides adequate management control measures, *e.g.,* statistical process controls, as a means of managing such variation.

(3) The Contractor shall report losses of Government property outside normal process variation, *e.g.,* losses due to—

(i) Theft;

(ii) Inadequate storage;

(iii) Lack of physical security; or

(iv) ''Acts of God.''

(4) This reporting requirement does not change any liability provisions or other reporting requirements that may exist under this contract.

(End of clause)

[76 FR 6008, Feb. 2, 2011, as amended at 77 FR 23632, Apr. 20, 2012]

252.245–7003 Contractor Property Management System Administration.

As prescribed in 245.107(4), insert the following clause:

CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012)

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

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of this clause.

Property management system means the Contractor's system or systems for managing and controlling Government property.

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) *General.* The Contractor shall establish and maintain an acceptable property management system. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's property management system shall be in accordance with paragraph (f) of the contract clause at Federal Acquisition Regulation 52.245–1.

(d) *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 property management system. 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; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) 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.

(f) *Withholding payments*. If the Contracting Officer makes a final determination to disapprove the Contractor's property management system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

[76 FR 28878, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012; 77 FR 23632, Apr. 20, 2012]

252.245–7004 Reporting, Reutilization, and Disposal.

As prescribed in 245.107(5), use the following clause:

REPORTING, REUTILIZATION, AND DISPOSAL (MAY 2013)

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

(1) *Demilitarization* means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.

(2) *Export-controlled items* means items subject to the Export Administration Regulations (EAR) (15 CFR parts 730–774) or the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The term includes—

(i) *Defense items*, defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, etc.; and

(ii) *Items*, defined in the EAR as ''commodities,'' ''software,'' and ''technology,'' terms that are also defined in the EAR, 15 CFR 772.1.

(3) *Ineligible transferees* means individuals, entities, or countries—

(i) Excluded from Federal programs by the General Services Administration as identified in the System for Award Management Exclusions located at *https://www.acquisition.gov*;

(ii) Delinquent on obligations to the U.S. Government under surplus sales contracts;

(iii) Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or

(iv) Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.

(4) *Scrap* means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not ''scrap.''

(5) *Serviceable or usable property* means property with potential for reutilization or sale ''as is'' or with minor repairs or alterations.

(b) *Inventory disposal schedules*. Unless disposition instructions are otherwise included in this contract, the Contractor shall complete SF 1428, Inventory Schedule B, within the Plant Clearance Automated Reutilization Screening System (PCARSS). Information on PCARSS can be obtained from the plant clearance officer and at *http://www.dcma.mil/ITCSO/CBT/PCARSS/index.cfm*.

(1) The SF 1428 shall contain the following:

(i) If known, the applicable Federal Supply Code (FSC) for all items, except items in scrap condition.

(ii) If known, the manufacturer name for all aircraft components under Federal Supply Group (FSG) 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

(iii) The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.

(iv) Appropriate Federal Condition Codes. See Appendix 2 of DoD 4000.25–2, Military

Standard Transaction Reporting and Accounting Procedures manual, edition in effect as of the date of this contract. Information on Federal Condition Codes can be obtained at *http://www.DLA.Mil/J–6/DLMSO/Elibrary/Manuals/Milstrap/AP2__Index.asp*.

(2) If the schedules are acceptable, the plant clearance officer shall complete and send the Contractor a DD Form 1637, Notice of Acceptance of Inventory.

(c) *Proceeds from sales of surplus property*. Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(1) Forwarded to the Contracting Officer;

(2) Credited to the Government as part of the settlement agreement;

(3) Credited to the price or cost of the contract; or

(4) Applied as otherwise directed by the Contracting Officer.

(d) *Demilitarization, mutilation, and destruction*. If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this contract. The plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

(e) *Classified Contractor inventory*. The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Contracting Officer.

(f) *Inherently dangerous Contractor inventory*. Contractor inventory dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

(g) *Contractor inventory located in foreign countries*. Consistent with contract terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, Final Governing Standards, and Government-to-Government agreements. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(h) *Disposal of scrap*. (1) *Contractor with scrap procedures*. (i) The Contractor shall include within its property management procedure, a process for the accountability and management of Government-owned scrap. The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and, contain the necessary internal controls for mitigating the improper release of non-scrap property.

(ii) The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

(2) *Scrap warranty*. The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

(i) *Sale of surplus Contractor inventory*. (1) The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this contract and plant clearance officer direction.

(2) Any sales contracts or other documents transferring title shall include the following statement:

''The Purchaser certifies that the property covered by this contract will be used in (name of country). In the event of resale or export by the Purchaser of any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval.''

(j) *Restrictions on purchase or retention of Contractor inventory*. (1) The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard;

(ii) Is a member of the armed forces of the United States, including the U.S. Coast Guard; or

(iii) Has any functional or supervisory responsibilities for or within the DoD's property disposal/disposition or plant clearance programs or for the disposal of contractor inventory.

(2) The Contractor may conduct Internet-based sales, to include use of a third party.

(3) If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(4) The Contractor shall solicit a sufficient number of bidders to obtain adequate competition. Informal bid procedures shall be used, unless the plant clearance officer directs otherwise. The Contractor shall include in its invitation for bids, the sales terms and conditions provided by the plant clearance officer.

(5) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

(6) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(7) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the Contractor may (when the results are expected to justify the additional expense) display a notice of the proposed sale in appropriate public places, e.g., publish a sales notice on the Internet in appropriate trade journals or magazines and local newspapers.

(8) The plant clearance officer or representative will witness the bid opening. The Contractor shall submit, either electronically or manually, two copies of the bid abstract.

(9) The following terms and conditions shall be included in sales contracts involving the demilitarization, mutilation, or destruction of property:

(i) *Demilitarization, mutilation, or destruction on Contractor or subcontractor premises.* Item(s) ____ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(ii) *Demilitarization, mutilation, or destruction off Contractor or subcontractor premises.*

(A) Item(s) ____ require demilitarization, mutilation, or destruction by the Purchaser. Insert item number(s) and specific demilitarization, mutilation, or destruction requirements for item(s) shown in Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(B) Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative. Demilitarization will be accomplished as specified in the sales contract. Demilitarization shall be witnessed and verified by a Government representative using DRMS Form 145 or equivalent.

(C) The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(iii) *Failure to demilitarize.* If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the contract, the Contractor may, upon giving 10 days written notice from date of mailing to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.

(End of clause)

[76 FR 52143, Aug. 19, 2011, as amended at 77 FR 23632, Apr. 20, 2012; 78 FR 28758, May 16, 2013; 78 FR 30232, May 22, 2013]

252.246–7000 Material inspection and receiving report.

As prescribed in 246.370, use the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow (WAWF) electronic form (see paragraph (b) of the clause at 252.232–7003) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F–401, Table 1, of the Defense FAR Supplement.

(End of clause)

[68 FR 8455, Feb. 21, 2003, as amended at 73 FR 1831, Jan. 10, 2008; 73 FR 11359, Mar. 3, 2008]

252.246–7001 Warranty of data.

As prescribed in 246.710 (1), use the following clause:

WARRANTY OF DATA (DEC 1991)

(a) *Definition—Technical data* has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty*. Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor notification*. The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies*. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I (DEC 1991). As prescribed in 246.710(2), substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

Alternate II (DEC 1991). As prescribed at 246.710(3), substitute the following paragraph for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

252.246–7002 Warranty of construction (Germany).

As prescribed in 246.710(4), use the following clause:

WARRANTY OF CONSTRUCTION (GERMANY) (JUN 1997)

(a) In addition to any other representations in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Government-owned or -controlled real or personal property when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, or design furnished or workmanship performed.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable period of time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable period of time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the

Contractor shall not be liable for the repair of any defects of material or design furnished by the Government or for the repair of any damage resulting from any defeat in Government-furnished material or design.

(j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

[62 FR 34135, June 24, 1997; 62 FR 49306, Sept. 19, 1997]

252.246–7003 Notification of Potential Safety Issues.

As prescribed in 246.371(a), use the following clause:

NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013)

(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)(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 items, 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)

[72 FR 2636, Jan. 22, 2007, as amended at 78 FR 37991, June 25, 2013]

252.246–7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.

As prescribed in 246.270–4, use the following clause:

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)

[75 FR 66685, Oct. 29, 2010]

252.246–7005 Notice of Warranty Tracking of Serialized Items.

As prescribed in 246.710(5)(i)(A), use the following provision:

NOTICE OF WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

(a) *Definition. Unique item identifier* and *warranty tracking* are defined in the clause at 252.246–7006, Warranty Tracking of Serialized Items.

(b) *Reporting of data for warranty tracking and administration.* The offeror shall provide the information required by Attachment __, Warranty Tracking Information, (indicated by a single asterisk (*)), on each contract line item number, subline item number, or exhibit line item number for warranted items. The offeror shall provide all information required by Attachment __, Warranty Repair Source Instruction, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The ''Warranty Item Unique Item Identifier data category may also be completed in conjunction with Attachment __, Warranty Repair Source Instruction. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The offeror shall submit the data for warranty tracking to the Contracting Officer.

(End of provision)

[76 FR 33170, June 8, 2011]

252.246–7006 Warranty Tracking of Serialized Items.

As prescribed in 246.710(5)(i)(B), use the following clause:

WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

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

Duration means the warranty period. This period may be a stated period of time, amount of usage, or the occurrence of a specified event, after formal acceptance of delivery, for the Government to assert a contractual right for the correction of defects.

Enterprise means the entity (*e.g.*, a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

First use means the initial or first-time use of a product by the Government.

Fixed expiration means the date the warranty expires and the Contractor's obligation to provide for a remedy or corrective action ends.

Installation means the date a unit is inserted into a higher level assembly in order to make that assembly operational.

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise (e.g., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at *http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm.*

Item type means a coded representation of the description of the item being warranted, consisting of the codes C—component procured separate from end item, S—subassembly procured separate from end item or subassembly, E—embedded in component, subassembly or end item parent, and P—parent end item.

Starting event means the event or action that initiates the warranty.

Serialized item means each item produced is assigned a serial number that is unique

among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

Unique item identifier means a set of data elements marked on an item that is globally unique and unambiguous.

Usage means the quantity and an associated unit of measure that specifies the amount of a characteristic subject to the contractor's obligation to provide for remedy or corrective action, such as a number of miles, hours, or cycles.

Warranty administrator means the organization specified by the guarantor for managing the warranty.

Warranty guarantor means the enterprise that provides the warranty under the terms and conditions of a contract.

Warranty repair source means the organization specified by a warranty guarantor for receiving and managing warranty items that are returned by a customer.

Warranty tracking means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

(b) *Reporting of data for warranty tracking and administration*. The Contractor shall provide all information required by Attachment ____, Warranty Tracking Information on each contract line item number, subline item number, or exhibit line item number for warranted items. The Contractor shall provide all information required by Attachment ____, Warranty Repair Source Instructions, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The ''Warranty Item Unique Item Identifier'' data category may also be completed in conjunction with Attachment ____, Warranty Repair Source Instructions. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

(c) *Reservation of rights*. The terms of this clause shall not be construed to limit the Government's rights or remedies under any other contract clause.

(End of clause)

[76 FR 33170, June 8, 2011]

252.247–7000 Hardship conditions.

As prescribed in 247.270–4(a), use the following clause:

HARDSHIP CONDITIONS (AUG 2000)

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall—

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.

(End of clause)

[65 FR 50147, Aug. 17, 2000, as amended at 75 FR 51418, Aug. 20, 2010]

252.247–7001 Price adjustment.

As prescribed in 247.270–4(b), use the following clause:

PRICE ADJUSTMENT (JAN 1997)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of (*insert date*), and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1).

(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

(1) Are pursuant to the provisions of the collective bargaining agreements; or

(2) Are a result of effective modifications to the agreements; and

(3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or work-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

(i) Causes;

(ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or work-hour prices will be allowed in excess of _____ percent per year, except as provided in the Changes clause of this contract.

(1) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or work-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a statement that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2615, Jan. 17, 1997; 65 FR 50147, Aug. 17, 2000; 75 FR 51418, Aug. 20, 2010]

252.247–7002 Revision of prices.

As prescribed in 247.270–4(c), use the following clause:

REVISION OF PRICES (DEC 1991)

(a) *Definition. Wage adjustment*, as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

(1) Substantially affects the cost of performing this contract;

(2) Is generally applicable to the port where work under this contract is performed; and

(3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.* (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) *Submission of data.* At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.* If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.* (1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 65 FR 50147, Aug. 17, 2000; 75 FR 51418, Aug. 20, 2010]

252.247–7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment To The Cost Bearer.

As prescribed in 247.207, use the following clause:

PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JUN 2013)

(a) This clause implements section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

(b) Unless an exception is authorized by the Contracting Officer, the Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, with motor carriers, brokers, or freight forwarders.

(End of clause)

[75 FR 59105, Sept. 27, 2010, as amended at 78 FR 37991, June 25, 2013]

252.247–7004 Indefinite quantities—fixed charges.

As prescribed in 247.270–4(d), use the following clause:

INDEFINITE QUANTITIES—FIXED CHARGES (DEC 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 65 FR 50147, Aug. 17, 2000; 75 FR 51418, Aug. 20, 2010]

252.247–7005 Indefinite quantities—no fixed charges.

As prescribed in 247.270–4(e), use the following clause:

INDEFINITE QUANTITIES—NO FIXED CHARGES (DEC 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than $100.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 65 FR 50148, Aug. 17, 2000; 75 FR 51418, Aug. 20, 2010]

252.247–7006 Removal of contractor's employees.

As prescribed in 247.270–4(f), use the following clause:

REMOVAL OF CONTRACTOR'S EMPLOYEES (DEC 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 65 FR 50148, Aug. 17, 2000; 75 FR 51418, Aug. 20, 2010]

252.247–7007 Liability and insurance.

As prescribed in 247.270–4(g), use the following clause:

LIABILITY AND INSURANCE (DEC 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 65 FR 50148, Aug. 17, 2000; 75 FR 51418, Aug. 20, 2010]

252.247–7008 Evaluation of bids.

As prescribed in 247.271–3 (a), use the following provision:

EVALUATION OF BIDS (DEC 1991)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as ''No Charge,'' or the letters ''N/C'' or ''0,'' must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be $500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum

weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

Alternate I (DEC 1991). As prescribed in 247.271–4(a), add the following paragraph (e) to the basic clause:

(e) Notwithstanding paragraph (a), when ''additional services'' are added to any schedule, such ''additional services'' items will not be considered in the evaluation of bids.

[56 FR 36479, July 31, 1991, as amended at 75 FR 51418, Aug. 20, 2010]

252.247–7009 Award.

As prescribed in 247.270–3(b), use the following provision:

AWARD (DEC 1991)

(a) The Government shall make award by area to the qualified low bidder under each of the specified schedules to the extent of the bidder's stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51418, Aug. 20, 2010]

252.247–7010 Scope of contract.

As prescribed in 247.270–3(d), use the following clause:

SCOPE OF CONTRACT (DEC 1991)

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP-B-580), all equipment, plant and labor; and

(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

(i) Stenciling;

(ii) Cooperage;

(iii) Drayage of personal property in connection with other services;

(iv) Decontainerization of inbound shipments of personal property; and

(v) The handling of shipments into and out of the Contractor's facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51418, Aug. 20, 2010]

252.247–7011 Period of contract.

As prescribed in 247.270–3(e), use the following clause:

PERIOD OF CONTRACT (OCT 2001)

(a) This contract begins January 1, ____, and ends December 31, ____, both dates inclusive. Any work ordered before, and not completed by the expiration date shall be governed by the terms of this contract.

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 66 FR 49861, Oct. 1, 2001]

[56 FR 36479, July 31, 1991, as amended at 75 FR 51418, Aug. 20, 2010]

252.247–7012 Ordering limitation.

As prescribed in 247.270–3(g), use the following clause:

ORDERING LIMITATION (DEC 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next

higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

(c) In the event the procedure in paragraphs (a) and (b) does not fulfill the Government's total daily requirement, the Government may offer additional orders under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51418, Aug. 20, 2010]

252.247–7013 Contract areas of performance.

As prescribed in 247.270–3(h), use the following clause and complete paragraph (b) by defining each area of performance as required:

CONTRACT AREAS OF PERFORMANCE (DEC 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein: _____.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51418, Aug. 20, 2010]

252.247–7014 Demurrage.

As prescribed in 247.270–3(i), use the following clause:

DEMURRAGE (DEC 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51419, Aug. 20, 2010]

252.247–7015 Requirements.

As prescribed in 216.506(d), substitute the following paragraph (f) for paragraph (f) of the basic clause at FAR 52.216–21.

Alternate I (DEC 1991)

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

[56 FR 36479, July 31, 1991, as amended at 65 FR 63805, Oct. 25, 2000]

252.247–7016 Contractor liability for loss or damage.

As prescribed in 247.270–3(k), use the following clause:

CONTRACTOR LIABILITY FOR LOSS OR DAMAGE (DEC 1991)

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

Article means any shipping piece or package and its contents.

Schedule means the level of service for which specific types of traffic apply as described in DoD 4500.34–R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.* For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of

$1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51419, Aug. 20, 2010]

252.247–7017 Erroneous shipments.

As prescribed in 247.270–3(l), use the following clause:

ERRONEOUS SHIPMENTS (DEC 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) shall be—

(1) With the least possible delay;

(2) By a mode of transportation selected by the Contracting Officer; and

(3) At the Contractor's expense.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51419, Aug. 20, 2010]

252.247–7018 Subcontracting.

As prescribed in 247.270–3(m), use the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51419, Aug. 20, 2010]

252.247–7019 Drayage.

As prescribed in 247.270–3(n), use the following clause:

DRAYAGE (DEC 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor's warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination Contractor's facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for member's pickup at destination delivery point.

(c) The Contractor will reposition empty Government containers—

(1) Within the area of performance;

(2) As directed by the Contracting Officer; and

(3) At no additional cost to the Government.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 75 FR 51419, Aug. 20, 2010]

252.247–7020 Additional services.

As prescribed in 247.270–3(o), use the following clause:

ADDITIONAL SERVICES (AUG 2000)

The Contractor shall provide additional services not included in the Schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Military Traffic Management Command in effect at time of order.

(End of clause)

[65 FR 50148, Aug. 17, 2000]

[56 FR 36479, July 31, 1991, as amended at 75 FR 51419, Aug. 20, 2010]

252.247–7021 Returnable containers other than cylinders.

As prescribed in 247.305–70, use the following clause:

RETURNABLE CONTAINERS OTHER THAN CYLINDERS (MAY 1995)

(a) *Returnable container,* as used in this clause, includes reels, spools, drums, carboys, liquid petroleum gas containers, and

other returnable containers when the Contractor retains title to the container.

(b) Returnable containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of _____(insert number of days) calendar days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $_____ (insert dollar amount for rental) per container per day, computed separately for containers for each type, size, and capacity, and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that container:

_____

(Insert the container types, sizes, capacities, and associated replacement values.)

These containers shall become Government property.

(d) If any lost container is located within _____ (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of clause)

[60 FR 29503, June 5, 1995]

252.247–7022 Representation of extent of transportation by sea.

As prescribed in 247.574(a), use the following provision:

REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term *supplies* is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) *Representation.* The Offeror represents that it—

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247–7024, Notification of Transportation of Supplies by Sea.

(End of provision)

[56 FR 67222, Dec. 30, 1991, as amended at 57 FR 42633, Sept. 15, 1992; 72 FR 49206, Aug. 28, 2007]

252.247–7023 Transportation of supplies by sea.

As prescribed in 247.574(b)(1), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA (JUN 2013)

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

(1) *Components* means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) *Department of Defense* (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) *Foreign flag vessel* means any vessel that is not a U.S.-flag vessel.

(4) *Ocean transportation* means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) *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.

(6) *Supplies* means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea. (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) *Supplies* includes (but is not limited to) public works; buildings and facilities; ships;

floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(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) Noncommercial items; or

(B) Commercial items 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 contracts 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.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-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, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date 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;

(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 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 telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, 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 steamship company.

(f) 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 the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item Description	Contract Line Items	Quantity
Total.			

(g) If 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 non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, 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 (h), 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 (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(End of clause)

Alternate I (MAR 2000). As prescribed in 247.574(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(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 the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) 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);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

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

Alternate II (MAR 2000). As prescribed in 247.574(b)(3), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b)(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 the supplies being transported are—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) 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),

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

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

Alternate III (MAY 2002). As prescribed in 247.574(b)(4), substitute the following paragraph (f) for paragraphs (f), (g), and (h) of the basic clause:

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in subcontracts that are for a type of supplies described in paragraph (b)(2) of this clause.

[56 FR 36479, July 31, 1991, as amended at 60 FR 61602, Nov. 30, 1995; 65 FR 14401, Mar. 16, 2000; 67 FR 38022, May 31, 2002; 72 FR 49206, Aug. 28, 2007; 77 FR 76938, Dec. 31, 2012; 78 FR 37991, June 25, 2013]

252.247–7024 Notification of transportation of supplies by sea.

As prescribed in 247.574(c), use the following clause:

NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) 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);

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

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

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 61603, Nov. 30, 1995; 65 FR 14402, Mar. 16, 2000; 72 FR 49206, Aug. 28, 2007]

252.247–7025 Reflagging or repair work.

As prescribed in 247.574(d), use the following clause:

REFLAGGING OR REPAIR WORK (JUN 2005)

(a) *Definition. Reflagging or repair work*, as used in this clause, means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its outlying areas, if the reflagging or repair work is performed—

(1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

(2) Prior to acceptance of the vessel by the Government.

(End of clause)

[60 FR 29503, June 5, 1995, as amended at 70 FR 35548, June 21, 2005; 72 FR 49206, Aug. 28, 2007]

252.247–7026 Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

As prescribed in 247.574(e), use the following provision:

EVALUATION PREFERENCE FOR USE OF DOMESTIC SHIPYARDS—APPLICABLE TO ACQUISITION OF CARRIAGE BY VESSEL FOR DOD CARGO IN THE COASTWISE OR NONCONTIGUOUS TRADE (NOV 2008)

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

Covered vessel means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 12101, 12132, and 55102), commonly referred to as ''Jones Act''; 46 U.S.C. 12102, 12112, and 12119; and Section 2 of the Shipping Act, 1916 (46 U.S.C. 50501).

Foreign shipyard means a shipyard that is not a U.S. shipyard.

Overhaul, repair, and maintenance work means work requiring a shipyard period greater than or equal to 5 calendar days.

Shipyard means a facility capable of performing overhaul, repair, and maintenance work on covered vessels.

U.S. shipyard means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

(2) Description and cost of qualifying shipyard work performed in U.S. shipyards.

(3) Description and cost of qualifying shipyard work performed in foreign shipyards and whether—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(4) Names of shipyards that performed the work.

(5) Inclusive dates of work performed.

(d) Offerors are responsible for submitting accurate information. The Contracting Officer—

(1) Will use the information to evaluate offers in accordance with the criteria specified in the solicitation; and

(2) Reserves the right to request supporting documentation if determined necessary in the proposal evaluation process.

(e) The Department of Defense will provide the information submitted in response to this provision to the congressional defense committees, as required by Section 1017 of Public Law 109–364.

(End of provision)

[72 FR 49206, Aug. 28, 2007, as amended at 73 FR 70912, Nov. 24, 2008]

252.247–7027 Riding gang member requirements.

As prescribed in 247.574(f), use the following clause:

RIDING GANG MEMBER REQUIREMENTS (OCT 2011)

(a) *Definition. Riding gang member,* as used in this clause, has the same definition as ''riding gang member'' in title 46 U.S.C. 2101.

(b) *Requirements relating to riding gang members.* Notwithstanding 46 U.S.C. 8106, the Contractor shall ensure each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(c) *Exemption.*

(1) An individual is exempt from the requirements of paragraph (b) of this clause and shall not be treated as a riding gang member for the purposes of section 8106 of title 46, if that individual is on a vessel for purposes other than engaging in the operation or maintenance of the vessel and is—

(i) One of the personnel who accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

(ii) One of the force protection personnel of the vessel;

(iii) A specialized repair technician; or

(iv) An individual who is otherwise required by the Secretary of Defense or designee to be aboard the vessel.

(2) Any individual who is exempt under paragraph (c)(1) of this clause must pass a DoD background check before going aboard the vessel.

(i) The Contractor shall—

(A) Render all necessary assistance to U.S. Armed Forces personnel with respect to the identification and screening of exempted individuals. This will require, at a minimum, the Contractor to submit the name and other biographical information necessary to the Government official specified in the contract for the purposes of conducting a background check; and

(B) Deny access or immediately remove any individual(s) from the vessel deemed unsuitable for any reason by Military Sealift Command Force Protection personnel. The Contractor agrees to replace any such individual promptly and require such replacements to fully comply with all screening requirements.

(ii) The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(3) An individual exempted under paragraph (c)(1) of this clause is not treated as a riding gang member and shall not be counted as an individual in addition to the crew for the purposes of 46 U.S.C. 3304.

(End of clause)

[75 FR 65439, Oct. 25, 2010, as amended at 76 FR 61281, Oct. 4, 2011]

252.247–7028 Application for U.S. Government Shipping Documentation/Instructions.

As prescribed in 247.207, use the following clause:

APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (JUN 2012)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall request bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(1) Transportation Officer, if named in the contract schedule; or

(2) Contract administration office.

(b) If an automated system is available for shipment requests, use service/agency systems (e.g., Navy's Global Freight Management–Electronic Transportation Acquisition (GFM–ETA) and Financial Air Clearance Transportation System (FACTS) Shipment Processing Module, Air Force's Cargo Movement Operations System, DCMA's Shipment Instruction Request (SIR) E-tool, and DLA's Distribution Standard System Vendor Shipment Module in lieu of DD Form 1659.

(End of clause)

[77 FR 39141, June 29, 2012]

252.249–7000 Special termination costs.

As prescribed in 249.501–70, use the following clause:

SPECIAL TERMINATION COSTS (DEC 1991)

(a) *Definition. Special termination costs,* as used in this clause, means only costs in the following categories as defined in part 31 of the Federal Acquisition Regulation (FAR)—

(1) Severance pay, as provided in FAR 31.205–6(g);

(2) Reasonable costs continuing after termination, as provided in FAR 31.205–42(b);

(3) Settlement of expenses, as provided in FAR 31.205–42(g);

(4) Costs of return of field service personnel from sites, as provided in FAR 31.205–35 and FAR 31.205–46(c); and

(5) Costs in paragraphs (a) (1), (2), (3), and (4) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its

estimate of costs incurred or to be incurred, any amount for special termination costs to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The Contractor agrees to perform this contract in such a manner that the Contractor's claim for special termination costs will not exceed $_____. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.249–7001 [Reserved]

252.249–7002 Notification of anticipated contract termination or reduction.

As prescribed in 249.7003(c), use the following clause:

NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION(OCT 2010)

(a) *Definitions. Major defense program* means a program that is carried out to produce or acquire a major system (as defined in 10 U.S.C. 2302(5)) (see also DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs).

Substantial reduction means a reduction of 25 percent or more in the total dollar value of funds obligated by the contract.

(b) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) *Notice to employees and state and local officials.* Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to—

(1) Each employee representative of the Contractor's employees whose work is directly related to the defense contract; or

(2) If there is no such representative, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)); and

(4) The chief elected official of the unit of general local government within which the adverse effect may occur.

(d) *Notice to subcontractors.* Not later than 60 days after the Contractor receives the Contracting Officer's notice of the anticipated termination or reduction, the Contractor shall—

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract of $650,000 or more; and

(2) Require that each such subcontractor—

(i) Provide notice to each of its subcontractors with a subcontract of $150,000 or more; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts of $150,000 or more.

(e) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1). If the Contractor has specified that the anticipated contract termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act (29 U.S.C. 1661c(b) and paragraphs (1) through (14), (16), and (18) of section 1661c(c)).

(End of clause)

[61 FR 64637, Dec. 6, 1996, as amended at 71 FR 75893, Dec. 19, 2006; 75 FR 45074, Aug. 2, 2010]

252.251–7000 Ordering from Government supply sources.

As prescribed in 251.107, use the following clause:

ORDERING FROM GOVERNMENT SUPPLY SOURCES (AUG 2012)

(a) When placing orders under Federal Supply Schedules, Personal Property Rehabilitation Price Schedules, or Enterprise Software Agreements, the Contractor shall follow the terms of the applicable schedule or agreement and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal

Supply Schedule, Personal Property Rehabilitation Price Schedule, or Enterprise Software Agreement contractor).

(2) The following statement: Any price reductions negotiated as part of an Enterprise Software Agreement issued under a Federal Supply Schedule contract shall control. In the event of any other inconsistencies between an Enterprise Software Agreement, established as a Federal Supply Schedule blanket purchase agreement, and the Federal Supply Schedule contract, the latter shall govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(c) When placing orders for Government stock on a reimbursable basis, the Contractor shall—

(1) Comply with the requirements of the Contracting Officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948–A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts; and

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice. The Contractor shall annotate each invoice with the date of receipt. For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result in the DoD supply source refusing to honor the requisition (see DFARS 251.102(f)) or in the Contracting Officer terminating the Contractor's authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor's failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government's notice in which to provide additional information as to why the authorization should not be terminated. The termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(d) When placing orders for Government stock on a non-reimbursable basis, the Contractor shall—

(1) Comply with the requirements of the Contracting Officer's authorization; and

(2) When using electronic transactions to submit requisitions on a non-reimbursable basis only, place orders by authorizing contract number using the Defense Logistics Management System (DLMS) Supplement to Federal Implementation Convention 511R, Requisition; and acknowledge receipts by authorizing contract number using the DLMS Supplement 527R, Receipt, Inquiry, Response and Material Receipt Acknowledgement.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 29503, June 5, 1995; 67 FR 65512, Oct. 25, 2002; 69 FR 67858, Nov. 22, 2004; 77 FR 52258, Aug. 29, 2012]

252.251–7001 Use of Interagency Fleet Management System (IFMS) vehicles and related services.

As prescribed in 251.205, use the following clause:

USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (DEC 1991)

(a) The Contractor, if authorized use of IFMS vehicles, shall submit requests for five or fewer vehicles and related services in writing to the appropriate General Services Administration (GSA) Regional Customer Service Bureau, Attention: Motor Equipment Activity. Submit requests for more than five vehicles to GSA headquarters: General Services Administration, FTM, Washington, DC 20406. Include the following in each request:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and the period of use.

(3) A list of the Contractor's employees authorized to request vehicles and related services.

(4) A list of the makes, models, and serial numbers of Contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) The Contractor should make requests for any unusual quantities of vehicles as far in advance as possible.

(c) The Contractor shall establish and enforce suitable penalties for employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(d) The Contractor shall assume, without the right of reimbursement from the Government, the cost or expense of any use of IFMS vehicles and services not related to the performance of the contract.

(e) Only the Contractor may request authorization for subcontractor use of IFMS vehicles. The Contracting Officer will not grant authorization for subcontractor use without approval of the Contractor.

(End of clause)

PART 253—FORMS

Subpart 253.2—Prescription of Forms

Sec.
253.208 Required sources of supplies and services.
253.208–1 DD Form 448, Military Interdepartmental Purchase Request.
253.208–2 DD Form 448–2, Acceptance of MIPR.
253.209 Contractor qualifications.
253.209–1 Responsible prospective contractors.
253.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).
253.213–70 Completion of DD Form 1155, Order for Supplies or Services.
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Subpart 253.3—Illustration of Forms

253.303 Agency forms.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36554, July 31, 1991, unless otherwise noted.

Subpart 253.2—Prescription of Forms

253.208 Required sources of supplies and services.

253.208–1 DD Form 448, Military Interdepartmental Purchase Request.

Follow the procedures at PGI 253.208–1 for use of DD Form 448.

[71 FR 39005, July 11, 2006]

253.208–2 DD Form 448–2, Acceptance of MIPR.

Follow the procedures at PGI 253.208–2 for use of DD Form 448–2.

[71 FR 39005, July 11, 2006]

253.209 Contractor qualifications.

253.209–1 Responsible prospective contractors.

(a) *SF 1403, Preaward Survey of Prospective Contractor (General).* (i) The factors in Section III, Block 19, generally mean—

(A) *Technical capability.* An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

(B) *Production capability.* An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes—

(*1*) An assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment, and labor; and

(*2*) A determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

(C) *Quality assurance capability.* An assessment of the prospective contractor's capability to meet the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities, and equipment.

(D) *Financial capability.* A determination that the prospective contractor