

**DEPARTMENT OF TRANSPORTATION****48 CFR Chapter 12**

RIN 2105-AE26

**Streamline and Update the Department of Transportation Acquisition Regulation (TAR Case 2020-001)****AGENCY:** Department of Transportation.**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (DOT) is issuing a final rule amending the Transportation Acquisition Regulation (TAR). Under this initiative, all parts of the regulation were reviewed to streamline the regulation, to revise or remove policy that has been superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance that is internal to DOT and move it to the Transportation Acquisition Manual (TAM) as appropriate, and to incorporate new regulations or policies required to implement or supplement the FAR to execute DOT's unique mission and responsibilities. The TAM will incorporate portions of the internal procedural guidance removed from the TAR, as well as other internal agency acquisition policy. This rulemaking revises the entire TAR.

**DATES:** This rule is effective on November 7, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. LaWanda Morton-Chunn, Procurement Analyst, Acquisition Policy, Oversight & Business Strategies (M-61), Office of the Senior Procurement Executive (OSPE), Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366-2267. This is not a toll-free telephone number. Please refer to TAR Case 2020-001 in any written communications.

**SUPPLEMENTARY INFORMATION:****Background**

DOT published a proposed rule in the *Federal Register* at 86 FR 69452 on December 7, 2021, to amend the TAR to implement and/or supplement the FAR. Please refer to the proposed rule for a discussion of the reasons why DOT proposed the changes to the TAR described in that rule document. DOT provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The public comment period closed on February 7, 2022. DOT received no public comments on the proposed rule.

The TAR has been substantially revised and streamlined to update references to obsolete policies, procedures, and organizations, and to

incorporate electronic links to key references. Revisions to the TAR were necessary to incorporate additional policies, solicitation provisions, or contract clauses that implement and supplement the FAR to satisfy DOT mission needs, and to incorporate changes in dollar and approval thresholds, definitions, and DOT position titles and offices.

This rule adopts as a final rule the proposed rule published in the *Federal Register* on December 7, 2021, except for technical non-substantive changes to update terminology in accordance with FAR final rules and other minor administrative amendments as shown in the paragraphs that follow. This rule establishes a 2022 baseline edition of the TAR.

**Technical Non-Substantive Changes to the Rule**

This rule makes the non-substantive changes to the proposed rule described in the following paragraphs to provide clarity, eliminate confusion, and ensure compliance with the Federal Acquisition Regulation (FAR). Specifically, DOT is revising the term "commercial items" to reflect either "commercial products and commercial services" or "commercial products or commercial services" in alignment with FAR final rule, *Federal Acquisition Regulation: Revision of Definition of "Commercial Item"*, RIN 9000-AN76, effective December 6, 2021 (86 FR 61017). There are 28 mentions of the legacy term "commercial items" that were identified in the TAR proposed rule amendatory language in various TAR parts, subparts, and sections, to include titles as well as the underlying text. The legacy term "commercial items" was also referenced in two FAR clause references where the FAR title has also been revised because of the referenced FAR final rule.

The TAR is also updating terminology under TAR part 1239, Acquisition of Information Technology, and subpart 1239.2, to reflect a FAR change in terminology from "Electronic and Information Technology" to "Information and Communication Technology." This includes a change in the heading of subpart 1239.2 to correspond with the new FAR subpart heading.

Accordingly, DOT is revising the TAR final rule to reflect the updated terminology in accordance with the FAR final rules as reflected in the amendatory text as follows (items number 1-14 below):

1. Under 48 CFR chapter 12, Transportation Acquisition Regulation, Table of Contents, the title for TAR part

12, Acquisition of Commercial Items, DOT is revising the title from "Acquisition of Commercial Items," to "Acquisition of Commercial Products and Commercial Services".

2. Under TAR part 12, Acquisition of Commercial Items, DOT is revising the title from "Acquisition of Commercial Items," to "Acquisition of Commercial Products and Commercial Services".

3. Under TAR part 12, in the Table of Contents, subpart 1213.3, DOT is revising the heading for subpart 1212.3 from "Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items" to read "Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services."

4. Under TAR part 12, in the Table of Contents, section 1212.301, Solicitation provisions and contract clauses for the acquisition of commercial items, DOT is revising the heading to read "Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services."

5. At subpart 1212.3 DOT is revising the heading from "Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items" to read "Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services."

6. At section 1212.301, DOT is revising the heading from "Solicitation provisions and contract clauses for the acquisition of commercial items" to read "Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services."

7. Under section 1212.301, at paragraph (f), DOT is revising "commercial items" to read "commercial products or commercial services."

8. Under section 1239.7003, Contract clauses, in paragraphs (a), (b), and (c), where DOT sets forth the prescription to contract clauses 1252.239-72, Compliance with Safeguarding DOT Sensitive Data Controls; 1252.239-73, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information; and 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, respectively, DOT is revising the phrase "commercial items" in each prescription to read "commercial products and commercial services." Additionally, in paragraph (b), in the prescription for clause 1252.239-73, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information,

DOT is adding the word “commercial” before “services” in the last sentence.

9. Under section 1239.7204, Contract clauses, in each of the prescriptions in paragraphs (a) through (m), for clauses 1252.239–76, Cloud Computing Services; 1252.239–77, Data Jurisdiction; 1252.239–78, Validated Cryptography for Secure Communications; 1252.239–79, Authentication, Data Integrity, and Non-Repudiation; 1252.239–80, Audit Record Retention for Cloud Service Providers; 1252.239–81, Cloud Identification and Authentication (Organizational Users) Multi-Factor Authentication; 1252.239–82, Identification and Authentication (Non-Organizational Users); 1252.239–83, Incident Reporting Timeframes; 1252.239–84, Media Transport; 1252.239–85, Personnel Screening—Background Investigations; 1252.239–86, Boundary Protection—Trusted internet Connections; 1252.239–87, Protection of Information at Rest; and 1252.239–88, Security Alerts, Advisories, and Directives, respectively, DOT is revising the phrase “commercial items” in each prescription to read “commercial products and commercial services.”

10. Under section 1252.232–71, Limitation of Government’s Obligation, paragraph (b), where it discusses incrementally funding Contract Line Items Numbers (CLIN(s)), DOT is revising the heading of the referenced FAR clause 52.214–4, “Commercial Terms and Conditions—Commercial Items,” to read “Commercial Terms and Conditions—Commercial Products and Commercial Services.” And in paragraph (e), where it discusses the termination provisions and references FAR clause 52.212–4, the heading is also revised to reflect the new updated FAR heading of “Commercial Terms and Conditions—Commercial Products and Commercial Services.”

11. Under section 1252.239–73, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, in paragraph (c), Subcontract flowdown requirement, of the clause, DOT is revising the phrase “commercial items” to read “commercial products or commercial services.”

12. Under section 1252.239–74, Safeguarding DOT Sensitive Data, and Cyber Incident Reporting, in paragraph (o)(1) of the clause, DOT is revising the phrase “commercial items” to read “commercial products or commercial services.”

13. Under section 1252.239–76, Cloud Computing Services, in paragraph (j), Subcontract flowdown requirement,

DOT is revising the phrase “commercial items” to read “commercial products or commercial services.” Additionally, DOT is revising the TAR final rule to revise the use of the terminology from “electronic and information technology (EIT)” to the FAR updated usage of “Information and Communication Technology” as shown below in item number 14.

14. The following technical/administrative non-substantive revisions to TAR subpart 1239.2 were made to reflect updated FAR terminology:

a. Heading of subpart 1232.9 is revised from “Electronic and Information Technology” to read “Information and Communication Technology.”

b. Under section 1239.201, Scope of subpart, the first sentence referring to “EIT” is removed and “Information and Communication Technology (ICT)” is used instead. The FAR was updated to reflect “Information and Communication Technology” and the TAR final rule incorporates this new term and usage as well.

c. Under section 1239.203, Applicability, the phrase, “Solicitations for information technology (information and communication technology) or IT-related supplies and services may require submission of a Section 508 Checklist . . .” is revised to read “Solicitations for information and communication technology supplies and services may require submission of a section 508 Checklist . . .” to align with the FAR usage of the updated terminology.

d. Under section 1252.239–93, Information and Communication Technology Accessibility, paragraph (a), Definition, is removed in its entirety. The term “Electronic and Information Technology (EIT)” supplies and services is no longer necessary because the FAR is updated to reflect the usage of the phrase “Information and Communication Technology” and the TAR final rule incorporates this new usage as well.

15. Additionally, the following minor administrative corrections were made to reflect appropriate citation references in accordance with the U.S. Government Publishing Office (GPO) Style Manual and the FAR Drafting Guide:

a. Under section 1201.104, paragraph (a), the reference to “Chapter 12” is revised to read “chapter 12.”

b. Under section 1224.103, the reference “49 CFR part 10” is revised to read “49 CFR part 10.”

c. Under section 1224.203, the reference “49 CFR part 7” is revised to read “49 CFR part 7.”

d. Under section 1239.7402, paragraph (a), the reference to “36 CFR Chapter XII Subchapter B” is revised to read “36 CFR chapter XII, subchapter B.”

e. Under section 1252.239–75, DOT Protection of Information About Individuals, PII, and Privacy Risk Management Requirements, paragraph (c)(1), the reference to “49 CFR part 10” is revised to read “49 CFR part 10.”

f. Under section 1252.239–91, Records Management, paragraph (b), the reference to “36 CFR Chapter XII Subchapter B” is revised to read “36 CFR chapter XII, subchapter B.”

16. DOT also makes the following general non-substantive technical and administrative updates to correct grammar or other sentence formatting and structure, as well as to provide clarity to current DOT policies and procedures:

a. Under section 1201.102–70, paragraph (a), the second sentence is revised to read “. . . and to ensure that the process embodies fairness . . .” in lieu of “to embody fairness . . .”.

b. Under section 1201.105–2, Arrangement of regulations, in the illustrations at paragraphs (c)(3)(iv) and (v), the TAR citations are corrected to reflect the example citation of TAR 1201.105–2.

c. Under section 1201.301, Policy, paragraph (a)(1)(ii), the title “Senior Executive” is revised to read “Senior Procurement Executive.”

d. Under section 1201.301–70, Amendment of the Transportation Acquisition Regulation, paragraph (a), we added a phrase at the end of the email address to provide clarity that proposed changes “must include the following elements” referring to paragraphs (a)(1) through (4).

e. Under section 1201.301–71, Effective dates for Transportation Acquisition Circulars (TACs), in paragraph (a), the word, “or” is added between “effective upon receipt” or “upon a specified date,” to ensure proper sentence construction.

f. Under section 1203.204, Treatment of violations, “DOT” is substituted for the referenced “Government” legal counsel in paragraphs (a) and (c) to specify DOT legal counsel will provide advice to heads of contracting activities.

g. Under section 1203.301, General, “DOT” is substituted for the referenced “Government” legal counsel in paragraph (b).

h. Under section 1203.405, Misrepresentations or violations of the Covenant Against Contingent Fees, “DOT” is substituted for the referenced “Government” legal counsel in paragraph (a).

i. In section 1204.804–570, Supporting closeout documents, the sentence is reconstructed to move the parenthetical reference referring to paragraphs (a)(1) through (4) later in the sentence.

j. In section 1204.1301, Policy, the phrase “or NIST issued successor publications” is removed as unnecessary.

k. Under section 1209.403, Definitions, minor revisions are made for clarity—

(i) Under the definition “DOT Order 4200.5G” the phrase “or its successor” is removed as unnecessary.

(ii) Under the definition “Senior Accountable Official (SAO) for Suspension and Debarment,” the term “departmental” is removed, and the phrase “for the Department of Transportation” is added to the second sentence.

(iii) Under the definition “Suspension and Debarment Coordinator (SDC),” the term “Suspending and Debarring Official (SDO)” is spelled out to ensure clarity.

(iv) Under the definition “Suspending and Debarring Official (SDO),” administrative edits to remove the spelled-out term for the Office of the Secretary of Transportation is removed, and a website address for where a list of DOT Operating Administration (OA)-appointed SDOs is provided.

l. In section 1209.405, Effect of listing, in paragraph (e)(2), the phrase “that a compelling reason exists” is revised to “of compelling reasons to”. And in paragraph (e)(3), the phrase “that a compelling reason exists” is revised to “of compelling reasons”.

m. In section 1209.406–1, General, paragraph (c), the word “each” is inserted before “OA-appointed SDO . . .”.

n. In section 1209.406–3, Procedures, paragraph (d)(2), a comma after “The SDO reviews submittals” is removed, and the word “and” is inserted.

o. In section 1209.407–3, Procedures, paragraph (d), in the second sentence a comma after “The SDO reviews submittals” is removed and the word “and” is inserted.

p. Under part 1213, Simplified Acquisition Procedures, in section 1213.7000, Applicability, in paragraph (a) the word “also” is removed before the phrase “applies to Standard Form (SF) 182, . . .”.

q. Under part 1219, Small Business Programs, in section 1219.7000, General, the link has been updated to a more direct link to DOT’s mentor-protégé program material on the Office of Small and Disadvantaged Business Utilization (OSDBU) website.

r. Under part 1223, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace, in section 1223.7000, Contract clauses, paragraph (c), the sentence is reconstructed to make the prescription clear by moving the condition to the front of the sentence that the clause prescribed shall be inserted “in all solicitations and contracts exceeding the simplified acquisition threshold, . . .”.

s. Under part 1232, Contract Financing, in section 1232.770–4, Policy, paragraph (a)(1), the word “or” is added in the second sentence after “DOT”. And in paragraph (a)(6), the word “an” is added before “individual”.

t. In section 1232.7003, Payment system registration, the two sentences that comprised the proposed text of the section are removed as they may duplicate some of the language as stated in section 1232.7002(a). The section heading is retained to reflect the coverage in the underlying subsections.

u. In section 1235.010–70, Scientific and technical reports—acquisition, publication and dissemination, we are removing the section in its entirety as it is unnecessary. The FAR adequately covers content in this area, though DOT may consider adopting an agency-specific policy.

v. In section 1235.070, Research misconduct, in paragraph (a), we have included a link to the cited DOT Deputy Secretary Memorandum, Implementation of Departmental Scientific Integrity Policy, April 10, 2012, and have removed a reference to an outdated policy document. Note that DOT intends to update its scientific integrity policies and the TAR as necessary consistent with the Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking (Jan. 27, 2021).

w. Under part 1237, Service Contracting, in section 1237.110–70, Contract clauses, in paragraph (a), the word “and,” is added after “Government facilities”.

17. General non-substantive technical updates to the proposed rule pertaining to part 1239, Acquisition of Information Technology. The following non-substantive minor administrative corrections were made to correct grammar or other sentence formatting and structure, as well as to provide clarity to current DOT policies and procedures:

a. In section 1239.000, Scope of part, DOT is removing the phrase “information technology-related services and” after the word

“including” as it is duplicative to the earlier part of the sentence.

b. In section 1239.101–70–3, Policy, the section is revised slightly to clarify it by adding “products or services supporting the” before the word “development” and the word “software” after DOT.

c. In section 1239.7001, Definitions, under the definition for “DOT sensitive data” the word “as” is removed after “unclassified information”.

d. In section 1239.7203, DOT FedRAMP specific requirements, paragraph (b), Digital signature cryptography—(authentication, data integrity, and non-repudiation), DOT has added “(1–4)” after the phrase, “contracting officers shall specify what level” to denote those FIPS 140–2 (1–4) levels referenced in paragraph (a). In paragraph (d), Cloud identification and authentication (organizational users) multi-factor authentication, the phrase “or successor publications” is removed after the FIPS 201–2, Personal Identity Verification (PIV) of Federal Employees and Contractors reference as it is unnecessary to include the phrase. In paragraph (e), the phrase “are required to” is removed as it is redundant. In paragraph (i), the word “who” is inserted in the first sentence before the phrase “shall undergo required DOT background investigations . . .” to correct grammar.

e. In section 1239.7204, Contract clauses, in paragraph (h), the prescription for clause 1252.239–83 is revised by removing the words “all services” before the phrase “solicitations and contracts,” and the word “and” is removed before “for information technology services . . .” as both are unnecessary. In paragraph (k), the word “all” is removed before “solicitation and contracts,” as unnecessary.

f. In section 1239.7302, Policy, the word “will” is removed as unnecessary.

g. In section 1239.7400, Scope of subpart, the last word in the section “exists” is revised to “exist.”

h. In section 1239.7402, Policy, paragraph (a)(1), the phrase “the Federal Records Act” is removed as an incorrect title reference, and the word “and” is added in the citation references. In paragraph (a)(2), the phrase “the Federal Records Act” is removed as an incorrect title reference, and the phrase “records management laws and” is inserted after “relevant” and the words “statute or” is removed, and an “s” is added to regulations, and the comma is removed after “regulation” so the latter part of the sentence now reads: “. . . only as permitted by relevant records management laws and regulations . . .”.

In paragraph (a)(3), the citation for 36 CFR part 1230 is corrected by adding the word “part” as shown. In paragraph (a)(4), the phrase “, is properly protected” is removed at the end of the first sentence.

i. In section 1239.7403, Contract clause, the word “or” is removed before the word “disseminate” so the end of the sentence now reads: “. . . associates collect, access, maintain, use, disseminate or otherwise handle Federal records.”

18. Additional general non-substantive technical updates to the proposed rule that follow part 1239 follow. These also include the following non-substantive minor administrative corrections to correct grammar or other sentence formatting and structure, as well as to provide clarity to current DOT policies and procedures:

a. Under part 1242, Contract Administration and Audit Services, in section 1242.302, Contract administration functions, paragraph (a), the word “either” is removed before “the cognizant government auditing agency,” as unnecessary. In paragraph (a)(13), the acronym “OA” is moved after “cognizant” in the second sentence.

b. Under part 1246, Quality Assurance, in section 1246.101–70, Additional definitions, under the definition “Major acquisition” the word “also” is removed before “for information technology or information technology related acquisitions, . . .” as unnecessary.

c. In section 1246.706–70, Warranty terms and conditions—requirements, in paragraph (a)(9), the word “and” is added after “(e.g., delivery, acceptance, in-service date)”, the word “ending” is revised to read “end”, the word “period” is added after “warranty”, and the word “specify” is added before “circumstances” in order to provide better clarity to the flow of the sentence and meaning. In paragraph (b)(1), the word “that” is substituted for “which.” In paragraph (b)(3), at the beginning of the sentence the word “The” is removed and replaced with “A” so it reads “A warranty provided . . .”.

d. Under part 1247, Transportation, in section 1247.506, Procedures, the long run-on sentence is broken up by adding a period after “are not available” and the words “MARAD can also” is added to start the next sentence, and the words “and they can” are removed.

19. Finally, in parts 1252 and 1253 these technical non-substantive revisions are reflected in the following provisions, clauses, or form prescription published in the proposed rule. These also include the following non-

substantive minor administrative corrections to correct grammar or other sentence formatting and structure, as well as to provide clarity to current DOT policies and procedures:

a. In section 1252.204–70, Contractor Personnel Security and Agency Access, under paragraph (a), Definitions, the following definitions had minor administrative or grammatical updates: “Contractor employee” and “Identification card (or “ID Card”).” In paragraph (b), the words “each level” was added so the text before the list of levels now reads “and each level includes the prior levels”. In paragraph (f), Background investigation and adjudication, “PIV–1” is corrected to reflect “PIV–I”.

b. In section 1252.209–71, Limitation of Future Contracting, in paragraph (c)(2), the word “remains” is revised to use “remain” in the phrase “. . . if these data remain proprietary or confidential, . . .”.

c. In section 1252.217–72, Performance, in paragraph (d), the words “or not” are removed before “the Contractor”.

d. In section 1252.217–73, Inspection and Manner of Doing Work, paragraph (e)(9), the singular word “valve” is revised to reflect “valves.”

e. In section 1252.217–76, Liability and Insurance, paragraph (b)(3)(i)(C) is revised to add “regardless of” before “whether” and to remove “or not” after “whether” in both instances. In paragraph (c)(2), in the last sentence the word “does” is deleted, and the singular word “apply” is revised to “applies”. This corrects the grammar and readability of the sentence. In paragraph (f)(3), the word “in” is removed before “the conduct of suits” in the first sentence so the end of the sentence now reads: “. . . attendance of witnesses, and the conduct of suits.”

f. In section 1252.222–72, Contractor Cooperation in Equal Employment Opportunity and Anti-Harassment Investigations, in paragraph (a), Definitions, under the definition “Good faith cooperation,” paragraph (3), the words “the course of” are deleted before “EEO”, and in paragraph (5) under that definition, the term “the Merit Systems Protection Board” is spelled out. In paragraph (b), the term “Equal Employment Opportunity” is removed and the acronym “EEO” remains.

g. In section 1252.223–73, Seat Belt Use Policies and Programs, we are removing a reference to a public-private partnership organization promoting traffic safety. DOT retains a reference to a DOT traffic safety website.

h. In section 1252.228–70, Loss of or Damage to Leased Aircraft, the phrase

“as it wishes” is removed and the phrase “in its discretion” is used in its place as more appropriate terminology.

i. In section 1252.232–70, Electronic Submission of Payment Requests, paragraph (c), the words “For vendors” is removed in the third sentence and replaced with “Vendors” and the words “they will be” are also removed and replace with “are” so the sentence reads more clearly now as “Vendors submitting invoices are required . . .”. In paragraph (d), the phrase at the beginning of the sentence “In order to” is removed and replaced with “To” so the start of the sentence now reads “To receive payment . . .”. And in paragraph (g), the last sentence removes “has been” after “DELPHI” and adds the word “is” so it now reads at the beginning of the sentence, “If DELPHI is succeeded by later technology . . .”.

j. In section 1252.235–70, Research Misconduct, in paragraph (c)(2), the word “or” is removed before “knowingly” so it now reads: “The misconduct must have been committed intentionally, knowingly, or recklessly; and . . .”. In paragraph (f)(3)(i), the text is removed in its entirety as duplicative of a similarly worded paragraph in (h) and thus unnecessary; the clarifying sentence is moved to paragraph (h). The text in paragraph (f)(3)(ii) is moved up into paragraph (f)(3) and the designation of (ii) is removed as unnecessary.

k. In section 1252.235–71, Technology Transfer, in paragraph (a)(5), the word “of” is removed before “interest” and the word “interest” is revised to “interested” so it now reads as follows at the end of the sentence, “stakeholders most likely to be interested in the commercialization of the research outputs;”. In paragraph (a)(7), the Contracting Officer fill-in is moved to the end of the sentence.

l. In section 1252.237–70, Qualifications of Contractor Employees, in paragraph (a) the first sentence is revised to add “is proprietary data or” before “if subject to unauthorized access,” and is removed from later in the sentence for clarity. In paragraph (b), the word “or” is inserted before “sensitive information or resources”. And in paragraph (c), the word “of” is inserted before “those employees.”

m. In section 1252.239–70, Security Requirements for Unclassified Information Technology Resources, paragraph (b), in the last sentence, the word “and” is removed after “. . . in accordance with Federal and DOT policies and procedures,” and the word “,which” is added after “as amended during the terms of this contract,” and word “and” is removed before “include”.

n. In section 1252.239–72, Compliance with Safeguarding DOT Sensitive Data Controls, paragraph (c), DOT added the reference to “Revision 2” to the NIST 800–171 reference and title and updated a new direct link to the cited publication at *nist.gov*. We also added in the Revision 2 (Rev. 2) reference in the clause at paragraphs (d) and (e).

o. In section 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, we revised the wording in paragraph (a) under the definition for “Adequate security” to remove “balance and” before the phrase “are commensurate”, to remove “impact and” before “consequences”, to add the words “and probability” after “consequences”, and to delete the word “the” before “loss, misuse”. In paragraphs (b)(2)(i) through (iv), references are updated and an updated link is provided. In paragraph (b)(2)(v), the word “to” is removed before “have an alternate” so the end of the sentence now reads “. . . to be nonapplicable, or have an alternative, but equally effective, security measure that may be implemented in its place.” In paragraph (b)(2)(vi), the words “the Contractor” is added after “Contracting Officer when” to clarify who is doing the requesting and “requesting” is revised to “request”. The end of the sentence now reads as follows: “. . . a copy of that approval shall be provided to the Contracting Officer when the Contractor requests its recognition under this contract.” In paragraph (c)(1)(i), the word “that” is removed after “DOT sensitive data” in the second sentence, and the words “whether the incident” is added and “affect” is revised to “affects” so the end of the last/second sentence now reads: “. . . in order to identify compromised DOT sensitive data or whether the incident affects the Contractor’s ability to provide operationally critical support; and . . .”. And in paragraph (o), Subcontract flowdown requirements, the reference to NIST SP 800–171 is updated to add “Rev. 2.”

p. In section 1252.239–75, DOT Protection of Information About Individuals, PII, and Privacy Risk Management Requirements, paragraph (n), Subcontract flowdown requirements, paragraph (n)(1), the word “its” is removed before “provisions relating to” and the word “and” is deleted before “Breach Notification”.

q. In section 1252.239–76, Cloud Computing Services, paragraph (b)(4), the reference to NIST Special Publication 800–53 is updated to reflect “Revision 5.” In paragraph (b)(6)(ii), the phrase “DOT Order” is revised to add

an “s” and to add “containing” immediately afterward so it now reads: “. . . FedRAMP and DOT Orders containing cybersecurity and privacy policies.” In paragraph (g), an “s” is added to “discover” and “isolate” so the beginning of the sentence now reads “The Contractor or subcontractor(s) that discovers and isolates malicious software. . . .”

r. In section 1252.239–77, Data Jurisdiction, in the first sentence the words “in which” are added after “all data centers” and the word “that” is deleted before “the data” so the beginning of the sentence now reads “The Contractor shall identify all data centers in which the data at rest or data backup will reside. . . .”

s. In section 1252.239–81, Cloud Identification and Authentication (Organizational Users) Multi-Factor Authentication, at the end of the last sentence the phrase “or NIST successor publications” is removed as unnecessary.

t. In section 1252.239–84, Media Transport, paragraph (a)(1) is reconstructed to remove “that is transported outside of controlled areas” after “that require protection” and a revised phrase of “when transported outside of controlled areas;” is added at the end of the sentence. In paragraph (b), the phrase “must ensure accountability” is removed at the end of the first sentence as it is redundant to a similar phrase earlier in the sentence.

u. In section 1252.239–85, Personnel Screening—Background Investigations, an updated active link is provided to a website containing the referenced Office of Management and Budget (OMB) memorandum.

v. In section 1252.239–88, Security Alerts, Advisories, and Directives, the words “who are” are added before “assigned system administration. . . .” and the word “who” is added after the words, “and/or security responsibilities and who are . . .”.

w. In section 1252.239–89, Technology Modernization, the word “or” is added before “strengthen the cyber security posture” in the second sentence.

x. In section 1252.239–91, Records Management, paragraph (b)(1), the words “the Federal Records Act” is removed as an incorrect title reference, and the word “and” is inserted in the citation reference chapters for 44 U.S.C. And in paragraph (b)(2), the words “other” is inserted before “relevant statute” at the end of the paragraph, “s” is added to “statute” and “regulation” so it now reads at the end of the last sentence: “. . . “other relevant statutes or regulations. . . .” And in paragraph

(d), the word “The” is added to start the sentence before “Contractor” in the second and third sentence.

y. In sections 1252.239–92, Information and Communication Technology Accessibility Notice, and 1252.239–93, Information and Communication Technology Accessibility, an updated link to the *www.section508.gov* site is provided in each.

z. Under part 1253, Forms, in section 1253.204–70, Administrative matters—agency specified forms, paragraph (b), DOT is providing the link to the DOT website where forms may be obtained and removing reference to an appendix as the forms controlled by DOT are provided at the linked website.

These minor technical nonsubstantive revisions will ensure DOT’s updated regulation is clear and contains the most recent citations, references, links, and current procedures.

The Department emphasizes that, in addition to the changes finalized in this rulemaking, it continues to track a number of new FAR case proposed and final rules, as well as Executive orders (E.O.s) and directives that the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are reviewing for potential impact to the FAR system. The Executive orders include E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (86 FR 7009; Jan. 25, 2021), E.O. 14005, “Ensuring the Future is Made in All of American by All of America’s Workers” (86 FR 7475; Jan. 28, 2021), and E.O. 14008, “Tackling the Climate Crisis at Home and Abroad” (86 FR 7619; Feb. 1, 2021). If and when FAR cases and proposed rules are drafted and FAR final rules are published, DOT intends to examine each of these for impact to the TAR and any updates that may be required to maintain the TAR. DOT is institutionalizing an ongoing, sustained TAR refreshment process, so that as FAR proposed and final rules, E.O.s, and other directives are issued, DOT will initiate new TAR cases to bring the regulation in alignment and to avoid duplication, as necessary. DOT will examine any FAR final rules that become effective and will take into consideration such FAR changes, as appropriate, in subsequent rulemakings. When needed, DOT will also consider use of an advanced notice of public rulemaking (ANPRM) to obtain public input as the agency implements rulemaking to address new and emerging issues that may be identified by the Councils or by DOT as a result of E.O.s and other directives. DOT will

use this public input to inform how DOT implements such guidance in the TAR.

### Regulatory Reviews

#### *Executive Order 12866 and 13563*

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages, distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Information and Regulatory Affairs has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and has determined that this rule is not a significant regulatory action under E.O. 12866.

#### *Paperwork Reduction Act*

This final rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), DOT submitted the information collections to OMB for review and approval. No comments were received on the proposed collections of information. If OMB does not approve the collections of information as requested, DOT will immediately remove the provisions containing a collection of information or take such other action as directed by OMB.

Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid OMB control number.

#### *Regulatory Flexibility Act*

DOT expects that the overall impact of the rule would benefit small businesses because the updated TAR, among other things, revised outdated information, removed extraneous procedural information that applies only to DOT's internal operating procedures, and removed policy or procedures duplicative of FAR requirements. Any additional costs associated with the rule, such as costs to implement the substantive new and revised requirements concerning

information technology security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)) can be factored into the contract price. On this basis, the Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of sections 603 and 604 do not apply.

While based on the foregoing, DOT has determined that the agency is not required to prepare a Final Regulatory Flexibility Analysis (FRFA), DOT has prepared a FRFA that is summarized here. No comments were received by the agency on the proposed rule or on the summary of the Initial Regulatory Flexibility Analysis.

#### *Final Regulatory Flexibility Analysis*

This Final Regulatory Flexibility Analysis has been prepared consistent with 5 U.S.C. 604.

#### 1. Statement of the Need for, and the Objectives of, the Rule

DOT is issuing a final rule amending the Transportation Acquisition Regulation (TAR) to implement updates to the TAR, remove extraneous procedural information that applies only to DOT's internal operating procedures, and remove policy or procedures duplicative of FAR requirements. The rule also includes substantive new and revised requirements concerning information technology (IT) security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)). FISMA requires agencies to identify and provide information security protections commensurate with security risks to Federal information collected or maintained for the agency and information systems used or operated on behalf of an agency by a contractor. The Federal Acquisition Regulatory Council (FAR Council) contemplated in their previous FAR rules on IT that subsequent supplemental policymaking at the agency level may have some impact on small business entities, because FISMA requires that agencies establish IT security policies commensurate with agency risk and potential for harm and that meet certain minimum requirements. The impact on small entities was understood to be variable depending on the agency

implementation. Based on a review of the potential impact on small business entities, DOT has determined that the requirements specified in the rule are inherent to successful performance on any Federal contract.

In addition to updating the TAR to remove outdated information, remove extraneous procedural information that applies only to DOT's internal operating procedures, and to remove policy or procedures duplicative of FAR requirements, the rule implements the IT security provisions of the FISMA. Section 301 of FISMA (44 U.S.C. 3544) requires that contractors be held accountable to the same security standards as Government employees when collecting or maintaining information or using or operating information systems on behalf of an agency. Security is to be considered during all phases of the acquisition life cycle. FISMA requires that agencies establish IT security policies commensurate with agency risk and potential for harm and that meet certain minimum requirements. Agencies are further required, through the Chief Information Officer (CIO) or equivalent, to assure compliance with agency security policies. The law requires that contractors and Federal employees be subjected to the same requirements in accessing Federal IT systems and data.

#### 2. Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of any Changes Made to the Rule as a Result of Such Comments

There were no public comments on the proposed rule, and there were no significant issues or comments raised by the public in response to the initial regulatory flexibility analysis.

#### 3. The Response of the Agency to any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

No comments were filed in response to the proposed rule.

#### 4. Description of and, Where Feasible, Estimate of the Number of Small Entities to Which the Rule Will Apply

To estimate the number of small businesses who could potentially be impacted by the rule, DOT identified contract award actions across key North American Industry Classification

System (NAICS) codes that could be affected for three fiscal years—FY 2017, 2018, and 2019 as set forth in the table below. DOT focused on businesses that could be impacted by the revisions to

part 1239, Acquisition of Information Technology, because of the potential costs resulting from the associated Paperwork Reduction Act information collection burdens, the cost of which

may be assessed by businesses and included in any proposed price for performance under any awarded contract.

NAICS	NAICS description	FY 2017	FY 2018	FY 2019	Total	Average
518210	Data Processing, Hosting, and Related Services.	172	177	238	587	196
541199	All Other Legal Services	9	12	15	36	12
541511	Custom Computer Programming Services.	896	1,964	870	3,730	1,243
541512	Computer Systems Design Services	754	942	1,036	2,732	911
541513	Computer Facilities Management Services.	385	358	329	1,072	357
541519	Other Computer Related Services	1,270	1,440	1,355	4,065	1,355
541618	Other Management Consulting Services.	86	53	40	179	60
541990	All Other Professional, Scientific, and Tech. Svcs..	947	1,002	848	2,797	932
561110	Office Administrative Services	373	352	279	1,004	335
561499	All Other Business Support Services	20	20	25	65	22
561621	Security Systems Services	187	142	146	475	158
	Total	5,099	6,462	5,181	16,742	5,581

As shown, DOT awarded over 16,742 contracts for IT or IT-related services during FY 2017 through FY 2019. To estimate the number of small businesses potentially impacted by the rule, DOT notes that in FY 2019, the department achieved a 37.12% goal of overall awards to all small business concerns across all NAICS and all operating administrations. Using this figure to

project the potential impact to small business entities who may be affected by the rule, the Department estimates that these businesses could be awarded 10%–25% of such work, or up to 4,186 contracts awarded to small businesses.

DOT received no comments from the public based on these estimates. To ensure our original estimates remain roughly the same, we pulled additional

data for FY 2020 and FY 2021. Because DOT recognizes that the ongoing COVID–19 pandemic during that period may skew that data and its overall utility, we retain the data estimates from FY 2017–FY 2019 as shown above, and provide the updated information experienced in FY 2020 and FY 2021 below:

NAICS	NAICS description	FY 2020	FY 2021	Total	Average
518210	Data Processing, Hosting, and Related Services	336	525	861	431
541199	All Other Legal Services	19	21	40	20
541511	Custom Computer Programming Services	769	750	1519	760
541512	Computer Systems Design Services	998	1092	2,090	1045
541513	Computer Facilities Management Services	334	248	582	291
541519	Other Computer Related Services	1280	1181	2461	1231
541618	Other Management Consulting Services	49	35	84	42
541990	All Other Professional, Scientific, and Tech. Svcs.	1247	1263	2510	1255
561110	Office Administrative Services	251	183	434	217
561499	All Other Business Support Services	31	34	65	33
561621	Security Systems Services	231	135	366	183
	Total	5,545	5,467	11,012	5,508

The data from FY 2020 and FY 2021 reveal that small businesses that might potentially be impacted by the rule actually decreased. DOT awarded over 16,742 contracts for IT or IT-related services during FY 2017 through FY 2019, but for FY 2020 and FY 2021, the same number of IT or IT-related services equated to 11,012. To estimate the number of small businesses potentially impacted by the rule, DOT notes that in FY 2020, the department achieved a 34.05% goal of overall awards to all small business concerns across all NAICS and all operating

administrations. The decrease in small business contract awards could be attributed to nationwide economic disruptions particularly to small businesses during the beginning of the COVID–19 pandemic. Using this updated figure to project the potential impact to small business entities who may be affected by the final rule, the Department estimates that these businesses could be awarded 10%–25% of such work, or up to 2,753 contracts awarded to small businesses and thus the impact to such businesses is decreased.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including An Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The revised recordkeeping and reporting requirements and estimated impacts were described in the Paperwork Reduction Act (PRA) section of the proposed rule and associated supporting statements are on file with the Office of Information and Regulatory

Affairs, the Office of Management and Budget. Those requirements and estimated impacts are incorporated into this FRFA by reference.

6. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule

DOT considered whether any other alternatives would reduce the impact on small businesses but concluded that the rule is necessary for consistency with the FAR, for FISMA compliance, and to ensure the information security and integrity of DOT information and information systems. Many of the provisions of the rule are intended to align with the FAR, update outdated procedures, remove internal operational procedures thus streamlining regulation, which could also potentially reduce the impact on small entities complying with the TAR.

#### Section 610 Review

As noted in the Department's portion of the Spring 2022 Unified Agenda, this final rule satisfies the Department's periodic review requirement pursuant to the Regulatory Flexibility Act, 5 U.S.C. 610.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. DOT has determined that this final rule would have no such effect on State, local, and tribal governments or on the private sector. Therefore, the analytical requirements of UMRA do not apply.

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

#### List of Subjects

##### 48 CFR Part 1201

Government procurement, Reporting and recordkeeping requirements.

##### 48 CFR Part 1203

Conflict of interest, Government procurement.

48 CFR Parts 1202, 1204, 1205, 1206, 1207, 1209, 1211, 1212, 1213, 1215, 1216, 1217, 1223, 1224, 1233, 1236, 1237, 1239, 1252, and 1253

Government procurement.

##### 48 CFR Part 1219

Government procurement, Small businesses.

##### 48 CFR Part 1222

Government procurement, Labor.

##### 48 CFR Part 1227

Copyright, Government procurement, Inventions and patents.

##### 48 CFR Part 1228

Government procurement, Insurance, Surety bonds.

##### 48 CFR Parts 1231, 1232, and 1242

Accounting, Government procurement.

##### 48 CFR Part 1235

Government procurement, Research.

##### 48 CFR Part 1246

Government procurement, Warranties.

##### 48 CFR Part 1247

Government procurement, Transportation.

Signed on or around September 2, 2022.

**Polly E. Trottenberg,**

*Deputy Secretary, Department of Transportation.*

■ For the reasons set out in the preamble, DOT amends title 48 of the Code of Federal Regulations by revising chapter 12 to read as follows:

## CHAPTER 12—DEPARTMENT OF TRANSPORTATION

### SUBCHAPTER A—GENERAL

- PART 1200 [RESERVED]
- PART 1201 FEDERAL ACQUISITION REGULATIONS SYSTEM
- PART 1202 DEFINITIONS OF WORDS AND TERMS
- PART 1203 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
- PART 1204 ADMINISTRATIVE AND INFORMATION MATTERS

### SUBCHAPTER B—ACQUISITION PLANNING

- PART 1205 PUBLICIZING CONTRACT ACTIONS
- PART 1206 COMPETITION REQUIREMENTS
- PART 1207 ACQUISITION PLANNING
- PART 1209 CONTRACTOR QUALIFICATIONS
- PART 1211 DESCRIBING AGENCY NEEDS
- PART 1212 ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

### SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

- PART 1213 SIMPLIFIED ACQUISITION PROCEDURES
- PART 1214 [RESERVED]
- PART 1215 CONTRACTING BY NEGOTIATION
- PART 1216 TYPES OF CONTRACTS
- PART 1217 SPECIAL CONTRACTING METHODS

### SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

- PART 1219 SMALL BUSINESS PROGRAMS
- PART 1222 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
- PART 1223 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
- PART 1224 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

- PART 1227 PATENTS, DATA, AND COPYRIGHTS
- PART 1228 BONDS AND INSURANCE
- PART 1231 CONTRACT COST PRINCIPLES AND PROCEDURES
- PART 1232 CONTRACT FINANCING
- PART 1233 PROTESTS, DISPUTES, AND APPEALS

### SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

- PART 1234 [RESERVED]
- PART 1235 RESEARCH AND DEVELOPMENT CONTRACTING
- PART 1236 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS
- PART 1237 SERVICE CONTRACTING
- PART 1239 ACQUISITION OF INFORMATION TECHNOLOGY
- PART 1241 [RESERVED]

### SUBCHAPTER G—CONTRACT MANAGEMENT

- PART 1242 CONTRACT ADMINISTRATION AND AUDIT SERVICES
- PART 1245 [RESERVED]
- PART 1246 QUALITY ASSURANCE
- PART 1247 TRANSPORTATION

### SUBCHAPTER H—CLAUSES AND FORMS

- PART 1252 SOLICITATION PROVISIONS AND CONTRACT CLAUSES
- PART 1253 FORMS
- PARTS 1254–1299 [RESERVED]

#### Subchapter A—General

##### PART 1200 [RESERVED]

##### PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

###### Subpart 1201.1—Purpose, Authority, Issuance

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1201.105 Issuance.

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1201.201 Maintenance of the FAR.

1201.201–1 The two councils.

#### Subpart 1201.3—Agency Acquisition Regulations

1201.301 Policy.

1201.301–70 Amendment of the Transportation Acquisition Regulation.

1201.301–71 Effective dates for Transportation Acquisition Circulars (TACs).

1201.301–72 Transportation Acquisition Circular numbering.

1201.304 Agency control and compliance procedures.

#### Subpart 1201.470—Deviations from the FAR and TAR

1201.403 Individual deviations.

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#### Subpart 1201.6—Career Development, Contracting Authority, and Responsibilities

1201.602 Contracting officers.

1201.602–2 Responsibilities.

1201.602–3 Ratification of unauthorized commitments.

1201.603 Selection, appointment, and termination of appointment of contracting officers.

1201.603–1 General.

1201.604 Contracting Officer's Representative (COR).

1201.604–70 Contract clause

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### Subpart 1201.1—Purpose, Authority, Issuance

##### 1201.101 Purpose.

The Department of Transportation (DOT), Transportation Acquisition Regulation (TAR), establishes uniform acquisition policies and procedures that implement and supplement the Federal Acquisition Regulation (FAR). The TAR provides regulatory or policy instruction when coverage is needed for DOT-specific subject matter not covered in the FAR. The TAR also includes policy statements that DOT considers important to both internal and external TAR audiences. The Transportation Acquisition Manual (TAM) contains internal operating procedures, providing supplementary guidance and instructions for carrying out FAR and TAR requirements.

#### 1201.102–70 DOT statement of guiding principles for the Department of Transportation Acquisition System.

(a) *Vision.* The TAR applies to all Department acquisitions unless otherwise excluded by statute. DOT strives to make its acquisition process effective, efficient, and transparent, and to ensure that the process embodies fairness and Governmentwide best practices.

(b) *Mission.* The TAR is a key component of DOT's acquisition process and is designed to provide clear and current regulatory and policy oversight to supplement or support implementation of the FAR.

(c) *Role of the Office of the Senior Procurement Executive.* The Office of the Senior Procurement Executive (OSPE) applies leadership and best-in-industry acquisition practices to establish acquisition policies and procedures. The OSPE supports the DOT's mission by providing timely, effective, and ethical business policies, practices, products, innovative programs, strategies, and services.

##### 1201.104 Applicability.

(a) Applicable statutes, the FAR, 48 CFR chapter 1, and the TAR, in this chapter, apply to all acquisitions within the Department unless otherwise specifically excluded by statute, the FAR, or the TAR.

(b) The following order of precedence applies to resolve any question of applicability concerning an acquisition regulation or a procedure found within the TAR, or the TAM which comprises the Department's internal operating procedures and guidance—

- (1) U.S. Statutes;
- (2) The FAR;
- (3) The TAR;
- (4) DOT Orders; and
- (5) The TAM.

(c) The Maritime Administration may depart from the requirements of the FAR and TAR as authorized by 40 U.S.C. 113(e)(15), but shall adhere to those regulations to the maximum extent practicable. Deviations from the FAR or TAR requirements shall be documented according to Maritime Administration procedures or in each contract file, as appropriate.

(d) The FAR, TAR, and TAM do not apply to the Federal Aviation Administration as provided by 49 U.S.C. 40110(d).

(e) For purposes of the FAR, TAR, and TAM, the Office of the Assistant Secretary for Research and Technology shall have the same authority as an Operating Administration as defined in 1202.1, and the Assistant Secretary for Research and Technology shall have the

same authority as a Head of the Operating Administration as defined in 1202.1.

##### 1201.105 Issuance.

##### 1201.105–1 Publication and code arrangement.

(a) The TAR is published or available in—

- (1) The **Federal Register**;
- (2) Cumulative form in the CFR; and
- (3) Online via the internet at <https://www.acquisition.gov/tar>.

(b) The TAR is issued as this chapter.

##### 1201.105–2 Arrangement of regulations.

(a) *General.* The TAR, which encompasses both Department and Operating Administration (OA)/Office of the Assistant Secretary for Research and Technology (OST–R)-specific guidance (see subpart 1201.3), conforms with the arrangement and numbering system prescribed by FAR 1.104. Guidance that is OA-specific contains the OA's acronym directly after the heading.

(b) *Numbering—(1) Department-wide guidance.* (i) The numbering illustrations at FAR 1.105–2(b) apply to the TAR.

(ii) Coverage within the TAR is identified by the prefix “12” followed by the complete TAR citation. For example, 1201.201–1(b).

(iii) Coverage in the TAR that supplements the FAR will use part, subpart, section, and subsection numbers ending in “70” through “89” (e.g., 1201.301–70). A series of numbers beginning with “70” is used for provisions and clauses.

(iv) Coverage in the TAR, other than that identified with a “70” or higher number, that implements the FAR uses the identical number sequence and caption of the FAR segment being implemented, which may be to the paragraph level. Paragraph numbers and letters are not always shown sequentially, but may be shown by the specific FAR paragraph implemented. For example, TAR 1201.201–1 contains only paragraph (b) because only this paragraph, correlated with the FAR, is implemented in the TAR.

(2) *Operating Administration-unique guidance.* Supplementary material for which there is no counterpart in the FAR or TAR shall be identified using chapter, part, subpart, section, or subsection numbers of “90” and higher.

(c) *References and citations.* The Department of Transportation Acquisition Regulation may be referred to as the TAR. Cross reference to the FAR in the TAR will be cited by “FAR” followed by the FAR numbered citation, and cross reference to the TAM in the

TAR will be cited by “TAM” followed by the TAM numbered citations. References to specific citations within the TAR will be referenced by the numbered citation only, *e.g.*, 1201.105–3.

(3) Using the TAR coverage at 1201.105–2(b) as a typical illustration, reference to the—

(i) Part would be “TAR part 1201” outside the TAR and “part 1201” within the TAR.

(ii) Subpart would be “TAR subpart 1201.1” outside the TAR and “subpart 1201.1” within the TAR.

(iii) Section would be “TAR 1201.105” outside the TAR and “1201.105” within the TAR.

(iv) Subsection would be “TAR 1201.105–2” outside the TAR and “1201.105–2” within the TAR.

(v) Paragraph would be “TAR 1201.105–2(b)” outside the TAR and “1201.105–2(b)” within the TAR.

#### 1201.105–3 Copies.

(a) Copies of the TAR as published in **Federal Register** and as set forth in the CFR may be purchased from the Government Publishing Office (GPO), U.S. Government Online Bookstore on the internet at <https://bookstore.gpo.gov/>.

(b) The TAR and Transportation Acquisition Circulars (TACs) are available on the internet at <https://www.acquisition.gov/>.

#### 1201.106 OMB approval under the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in the TAR have been approved by the Office of Management and Budget (OMB). Details concerning any TAR-related OMB approved control numbers are specified in the TAM.

### Subpart 1201.2—Administration

#### 1201.201 Maintenance of the FAR.

##### 1201.201–1 The two councils.

(b) The Senior Procurement Executive is responsible for providing a DOT representative to the Civilian Agency Acquisition Council (CAAC).

### Subpart 1201.3—Agency Acquisition Regulations

#### 1201.301 Policy.

(a)(1) *Acquisition regulations*—(i) *Department-wide acquisition regulations*. The Department of Transportation’s (DOT’s) Senior Procurement Executive (SPE) is the individual having authority to issue or authorize the issuance of agency regulations that implement or

supplement the FAR to include agency-unique policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process. This authority is re-delegated from the Assistant Secretary for Administration to the SPE.

(ii) *Operating Administration (OA) acquisition regulations*. OA supplemental acquisition regulations proposed to be inserted in the TAR as a TAR supplement regulation shall be reviewed and approved by the SPE. If approved by the SPE, the Office of the Senior Procurement Executive will prepare the rule for publication in the **Federal Register** in accordance with FAR 1.501. OA regulations may be more restrictive or require higher approval levels than those required by the TAR unless otherwise specified.

(2) *Acquisition procedures*. The SPE issues or authorizes the issuance of internal agency guidance at any organizational level. DOT internal operating procedures are contained in the TAM. OA procedures necessary to implement or supplement the FAR, TAR, or TAM may be issued by the head of the contracting activity (HCA), who may delegate this authority to any organizational level deemed appropriate. OA procedures may be more restrictive or require higher approval levels than those permitted by the TAM unless otherwise specified.

(b) The authority of the agency head under FAR 1.301(b) to establish procedures to ensure that agency acquisition regulations are published for comment in the **Federal Register** in conformance with the procedures in FAR subpart 1.5 is delegated to the Office of the General Counsel, Assistant General Counsel for Regulation.

#### 1201.301–70 Amendment of the Transportation Acquisition Regulation.

(a) Changes to the TAR may be the result of recommendations from internal DOT personnel, other Government agencies, or the public. Proposed changes shall be submitted in the following format to the Office of the Senior Procurement Executive (OSPE), 1200 New Jersey Avenue, SE, Washington, DC 20590 or [DOTAcquisitionPolicy@dot.gov](mailto:DOTAcquisitionPolicy@dot.gov) and must include the following elements:

(1) *Problem*. Succinctly state the problems created by current TAR language and describe the factual or legal reasons necessitating regulatory change.

(2) *Recommendation*. Identify the recommended change by using the current language (if applicable) and striking through the proposed deleted words with a horizontal line. Insert

proposed language in bold and brackets. If the change is extensive, reflect proposed deleted language in strikethrough and proposed new or revised language with complete paragraphs in bold and brackets.

(3) *Discussion*. Explain why the change is necessary and how it will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors, to include potential impact to small businesses. Provide any other information and documents, such as statutes, legal decisions, regulations, and reports, that may be helpful.

(4) *Point of contact*. Provide a point of contact who can answer questions regarding the recommendation.

(b) The TAR is maintained by the SPE through the TAR/TAM change process. This process consists of input from various DOT elements including representatives from DOT OAs specifically designated to formulate Departmental acquisition policies and procedures.

(c) Transportation Acquisition Circulars (TACs) (*see* 1201.301–72) will be used to publish the TAR throughout DOT.

#### 1201.301–71 Effective dates for Transportation Acquisition Circulars (TACs).

(a) *Effective dates set forth in TACs*. Unless otherwise stated in the body of TACs, statements to the effect that the policy or procedures are “effective upon receipt,” or “upon a specified date,” or that changes set forth in the document are “to be used upon receipt,” mean that any new or revised provisions, clauses, procedures, or forms must be included in solicitations, contracts, or modifications issued thereafter.

(b) *Effective dates for in-process acquisitions*. Unless expressly directed by statute or regulation, solicitations in process or negotiations that are completed when a TAC is issued are not required to include or insert new requirements, forms, clauses, or provisions, as may be set forth in a TAC. However, the chief of the contracting office must determine that it is in the best interest of the Government to exclude the new information and the determination and findings must be included in the contract file.

#### 1201.301–72 Transportation Acquisition Circular numbering.

Transportation Acquisition Circulars (TACs) will be numbered consecutively on a fiscal year basis beginning with number “01” prefixed by the last two digits of the fiscal year (*e.g.*, TACs 21–01 and 21–02 indicate the first two TACs issued in fiscal year 2021).

**1201.304 Agency control and compliance procedures.**

(a) DOT shall control the proliferation of acquisition regulations and any revisions thereto (except as noted in paragraph (b) of this section) by using an internal TAR change process.

(b) Specific OA-unique regulations will not be processed through the TAR/TAM change process but shall be reviewed by OA legal counsel and submitted to the OSPE for review and approval. (See 1252.101 for additional instructions pertaining to provisions and clauses.)

**Subpart 1201.470—Deviations From the FAR and TAR****1201.403 Individual deviations.**

The head of the contracting activity (HCA), or designee with a rank that is no lower than that of a Senior Executive Service (SES) official, may authorize individual deviations to the FAR and TAR, unless FAR 1.405(e) applies.

**1201.404 Class deviations.**

The SPE may authorize and approve class deviations from the FAR and TAR, unless FAR 1.405(e) applies.

**Subpart 1201.6—Career Development, Contracting Authority, and Responsibilities****1201.602 Contracting officers.****1201.602–2 Responsibilities.**

(d) Each DOT OA is responsible for establishing Contracting Officer's Representative (COR) nomination and appointment procedures consistent with the DOT Acquisition Workforce Career Development Program.

**1201.602–3 Ratification of unauthorized commitments.**

(b) *Policy.* DOT policy requires that all procurement decisions shall be made only by Government officials having authority to carry out such acquisitions. Procurement decisions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of the employee making an unauthorized commitment. Disciplinary action against an employee who makes an unauthorized commitment may be considered.

**1201.603 Selection, appointment, and termination of appointment for contracting officers.****1201.603–1 General.**

Each DOT OA is responsible for appointing its contracting officers. Each HCA shall appoint one Chief of the Contracting Office (COCO) for each OA.

Individuals designated as COCOs are considered contracting officers and shall be appointed by their respective HCA. The HCA may select, appoint, and terminate the appointment of contracting officers. The HCA may re-delegate this authority to a level no lower than that of the COCO.

**1201.604 Contracting Officer's Representative (COR).****1201.604–70 Contract clause.**

The contracting officer shall insert the clause at 1252.201–70, Contracting Officer's Representative, in solicitations and contracts that are identified as other than firm-fixed-price, and for firm-fixed-price solicitations and contracts when appointment of a contracting officer's representative is anticipated.

**PART 1202—DEFINITIONS OF WORDS AND TERMS****Subpart 1202.1—Definitions**

Sec.

1202.101 Definitions.

**Subpart 1202.70—Abbreviations**

1202.7000 General.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1202.1—Definitions****1202.101 Definitions.**

*Agency Advocate for Competition* means the Deputy Assistant Secretary for Administration.

*Agency, Federal agency, or Executive agency*, as used in the TAR, means the Department of Transportation (DOT).

*Chief Financial Officer (CFO)* is the principal fiscal advisor to the Secretary of DOT responsible for providing leadership, advice, and guidance in the development, implementation, and administration of DOT's budget, financial management, and performance management.

*Chief Information Officer* is the principal information technology (IT), cyber security, privacy, and records management advisor to the Secretary, and is the final authority on these matters within the Department.

*Chief of the Contracting Office (COCO)* means the individual(s) responsible for managing the contracting office(s) within an Operating Administration.

*Contracting activity* includes all the contracting offices within an Operating Administration and is the same as the term "procuring activity."

*Contracting officer* means an individual authorized by virtue of their position or by appointment to perform the functions assigned by the Federal

Acquisition Regulation (FAR), the Transportation Acquisition Regulation (TAR), and Transportation Acquisition Manual (TAM).

*Department of Transportation (DOT)* means, when referring to the various suborganizations and components of DOT, all of the Operating Administrations, as defined in the TAR/TAM, included within DOT.

*Head of the agency or Agency head* for Departmental procurement means the Deputy Secretary except for acquisition actions that, by the terms of a statute or delegation, must be done specifically by the Secretary of Transportation.

*Head of the contracting activity (HCA)* means the individual responsible for managing the contracting offices within an Operating Administration who is a member of the Senior Executive Service except for the HCA within the Great Lakes St. Lawrence Seaway Development Corporation (GLS), which shall be an individual no lower than one level above the COCO. The term HCA is the same as the term "head of the procuring activity."

*Head of the Operating Administration (HOA)* means the individual appointed by the President to manage the DOT operating administration.

*Operating Administration (OA)* means the following components of DOT—

(1) Federal Aviation Administration (FAA) (FAA is exempt from FAR, TAR, and TAM pursuant to the Department of Transportation and Related Agencies Appropriations Act, 1996 (Pub. L. 104–50));

(2) Federal Highway Administration (FHWA);

(3) Federal Motor Carrier Safety Administration (FMCSA);

(4) Federal Railroad Administration (FRA);

(5) Federal Transit Administration (FTA);

(6) Maritime Administration (MARAD);

(7) National Highway Traffic Safety Administration (NHTSA);

(8) Office of the Secretary of Transportation (OST);

(9) Pipeline and Hazardous Materials Safety Administration (PHMSA);

(10) Great Lakes St. Lawrence Seaway Development Corporation (GLS); and

(11) Office of the Assistant Secretary for Research and Technology (OST–R).

*Small Business Specialist (SBS)* means the individual appointed by each HCA to assist the Director, Office of Small and Disadvantaged Business Utilization in carrying out the purpose of the Small Business Act.

*Senior Procurement Executive (SPE)* means the Director of the Office of the Senior Procurement Executive.

**Subpart 1202.70—Abbreviations**

TAR and the agency’s associated internal policies and procedures in the TAM—

**1202.7000 General.**

The following abbreviations or acronyms may be used throughout the

TABLE 1 TO 1202.7000—ABBREVIATIONS AND ACRONYMS

CFO .....	Chief Financial Officer.
CIO .....	Chief Information Officer.
COCO .....	Chief of the Contracting Office.
COR .....	Contracting Officer’s Representative.
D&F .....	Determination and Findings.
FOIA .....	Freedom of Information Act.
HCA .....	Head of the Contracting Activity.
HOA .....	Head of the Operating Administration.
J&A .....	Justification and Approval.
OA .....	Operating Administration.
OIG .....	Office of the Inspector General.
OSDBU .....	Office of Small and Disadvantaged Business Utilization.
PCR .....	Procurement Center Representative.
RFP .....	Request for Proposal.
SBA .....	Small Business Administration.
SBS .....	Small Business Specialist.
SPE .....	Senior Procurement Executive.

**PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**Subpart 1203.1—Safeguards**

Sec.  
1203.101–3 Agency regulations.

**Subpart 1203.2—Contractor Gratuities to Government Personnel**

1203.203 Reporting suspected violations of the Gratuities clause.  
1203.204 Treatment of violations.

**Subpart 1203.3—Reports of Suspected Antitrust Violations**

1203.301 General.  
1203.303 Reporting suspected antitrust violations.

**Subpart 1203.4—Contingent Fees**

1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

**Subpart 1203.5—Other Improper Business Practices**

1203.502–2 Subcontractor kickbacks.

**Subpart 1203.7—Voiding and Rescinding Contracts**

1203.703 Authority.

**Subpart 1203.9—Whistleblower Protections for Contractor Employees**

1203.906 Remedies.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1203.1—Safeguards**

**1203.101–3 Agency regulations.**

(a) Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Supplemental Standards of Ethical Conduct for Employees of the Department of

Transportation, 5 CFR part 6001, apply to all DOT employees.

**Subpart 1203.2—Contractor Gratuities to Government Personnel**

**1203.203 Reporting suspected violations of the Gratuities clause.**

(a) Suspected violations of the Gratuities clause shall be reported to the contracting officer responsible for the acquisition (or the Chief of the Contracting Office (COCO) if the contracting officer is suspected of the violation). The contracting officer (or COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information—

- (1) The date, time, and place of the suspected violation;
- (2) The name and title (if known) of the individual(s) involved in the violation; and
- (3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.

(b) The person reporting the violation and witnesses (if any) should be requested to sign and date the information certifying that the information furnished is true and correct. The COCO shall report suspected violations to the Office of the Inspector General (OIG), 1200 New Jersey Avenue SE, Washington, DC 20590, with a copy to General Counsel and the OA’s Chief Counsel.

**1203.204 Treatment of violations.**

(a) The HCA is authorized to determine whether a Gratuities clause violation has occurred. If the HCA has

been personally and substantially involved in the procurement, DOT legal counsel advice should be sought to determine if a substitute for the HCA should be designated.

(b) The COCO shall ensure that the contractor is afforded the hearing procedures required by FAR 3.204(b). Government legal counsel should be consulted regarding the appropriateness of the hearing procedures.

(c) If the HCA determines that the alleged gratuities violation occurred during the “conduct of an agency procurement”, the COCO shall consult with DOT legal counsel regarding the approach for appropriate processing of either the Procurement Integrity Act violation and/or the Gratuities violation.

**Subpart 1203.3—Reports of Suspected Antitrust Violations**

**1203.301 General.**

(b) The same procedures contained in 1203.203 shall be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with DOT legal counsel for referral to the Department of Justice, if deemed appropriate.

**1203.303 Reporting suspected antitrust violations.**

(b) The same procedures contained in 1203.203 shall be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

**Subpart 1203.4—Contingent Fees****1203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) The same procedures contained in 1203.203 shall be followed for reporting the attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees (see FAR 52.203–5), except reports of misrepresentation or violations of the Covenant Against Contingent Fees shall be coordinated with DOT legal counsel for referral to the Department of Justice, if deemed appropriate.

**Subpart 1203.5—Other Improper Business Practices****1203.502–2 Subcontractor kickbacks.**

(g) The same procedures contained in 1203.203 shall be followed for reporting a violation of 41 U.S.C. chapter 87, Kickbacks.

**Subpart 1203.7—Voiding and Rescinding Contracts****1203.703 Authority.**

(a) The head of the contracting activity (HCA) is authorized by the Secretary of Transportation to declare void and rescind contracts and other transactions listed in Public Law 87–849 (18 U.S.C. 218), in which there has been a final conviction for bribery, conflict of interest, or any other violation of 18 U.S.C. 201–224.

(b) The Head of the Operating Administration (HOA) is authorized to make determinations, in accordance with FAR 3.703(b)(2).

**Subpart 1203.9—Whistleblower Protections for Contractor Employees****1203.906 Remedies.**

(a) The HCA is authorized to make determinations and take actions under FAR 3.906(a).

(b) The HCA is authorized to take actions under FAR 3.906(b).

**PART 1204—ADMINISTRATIVE AND INFORMATION MATTERS****Subpart 1204.1—Contract Execution**

Sec.

1204.103 Contract clause.

**Subpart 1204.5—Electronic Commerce in Contracting**

1204.502 Policy.

**Subpart 1204.8—Government Contract Files**

1204.801 General.

1204.804 Closeout of contract files.

1204.804–5 Procedures for closing out contract files.

1204.804–570 Supporting closeout documents.

**Subpart 1204.9—Taxpayer Identification Number Information**

1204.903 Reporting contract information to the IRS.

**Subpart 1204.13—Personal Identity Verification**

1204.1301 Policy.

1204.1303 Contract clause.

**Subpart 1204.17—Service Contracts Inventory**

1204.1703 Reporting requirements.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1204.1—Contract Execution****1204.103 Contract clause.**

The contracting officer shall insert the clause at FAR 52.204–1, Approval of Contract, filled in as appropriate, in solicitations and contracts when approval to award the resulting contract must be obtained from an official at a level above the contracting officer.

**Subpart 1204.5—Electronic Commerce in Contracting****1204.502 Policy.**

(c) DOT's preferred policy is to use electronic signatures, records and communication methods in lieu of paper transactions whenever practicable. Before using electronic commerce, the HOA and OA shall ensure that the OA systems are capable of ensuring authentication and confidentiality commensurate with the risk of unauthorized access to or modification of the information.

**Subpart 1204.8—Government Contract Files****1204.801 General.**

(a) The COCO is designated as the head of each office performing contracting and contract administration functions. The Chief Financial Officer (CFO) of the OA is designated as the head of the office performing paying functions.

**1204.804 Closeout of contract files.****1204.804–5 Procedures for closing out contract files.****1204.804–570 Supporting closeout documents.**

(a) When applicable and prior to contract closeout, the contracting officer shall obtain the listed DOT and Department of Defense (DOD) forms (see paragraphs (a)(1) through (4) of this section) from the contractor to facilitate

contract closeout. See part 1253 for links to forms.

(1) Form DOT F 4220.4, Contractor's Release, see FAR 52.216–7;

(2) Form DOT F 4220.45, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts, see FAR 52.216–7;

(3) Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement, see FAR 4.804–5(a)(13); and

(4) Department of Defense (DD) Form 882, Report of Inventions and Subcontracts, see FAR 52.227–14.

(b) The forms listed in paragraph (a) of this section are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. However, the forms may also be used for closeout of other contract types or when necessary to protect the Government's interest.

**Subpart 1204.9—Taxpayer Identification Number Information****1204.903 Reporting contract information to the IRS.**

(a) The SPE is authorized to report certain information, including Taxpayer Identification Number (TIN) data, to the Internal Revenue Service (IRS).

**Subpart 1204.13—Personal Identity Verification****1204.1301 Policy.**

(a) DOT follows National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS) Publication (PUB) Number 201–2, Personal Identity Verification (PIV) of Federal Employees and Contractors, and OMB implementation guidance for personal identity verification, for all affected contractor and subcontractor personnel when contract performance requires contractors to have routine physical access to a federally-controlled facility and/or routine physical and logical access to a federally-controlled information system.

(c) OAs must designate an official responsible for verifying contractor employees' personal identity.

**1204.1303 Contract clause.**

The contracting officer shall insert the clause at 1252.204–70, Contractor Personnel Security and Agency Access, in solicitations and contracts (including task orders, if appropriate), exceeding the micro-purchase threshold, when contract performance requires contractors to have routine physical access to a federally-controlled facility and/or routine physical and logical access to a Departmental/federally-controlled information system.

**Subpart 1204.17—Service Contracts Inventory****1204.1703 Reporting requirements.**

(b)(2) The OSPE is responsible for compiling and submitting the DOT annual inventory to OMB and for posting and publishing the inventory consistent with FAR 4.1703(b)(2).

**Subchapter B—Acquisition Planning****PART 1205—PUBLICIZING CONTRACT ACTIONS****Subpart 1205.1—Dissemination of Information**

Sec.

1205.101 Methods of disseminating information.

**Subpart 1205.4—Release of Information**

1205.402 General public.

1205.403 Requests from Members of Congress.

**Subpart 1205.6—Publicizing Multi-Agency Use Contracts**

1205.601 Governmentwide database of contracts.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1205.1—Dissemination of Information****1205.101 Methods of disseminating information.**

(a) The DOT Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE, Washington, DC 20590 publishes a Procurement Forecast of planned procurements each fiscal year on their website at <https://www.transportation.gov/osdbu/procurement-forecast/summary/>.

**Subpart 1205.4—Release of Information****1205.402 General public.**

(a) Upon request, and consistent with DOT Freedom of Information Act rules and regulations in 49 CFR part 7 and 1224.203, DOT will furnish the general public with the following information on proposed contracts and contract awards—

(1) After the opening of sealed bids, names of firms that submitted bids; and

(2) After contract award, the names of firms that submitted proposals.

(b) DOT will process requests for other specific information in accordance with the DOT Freedom of Information Act rules and regulations in 49 CFR part 7 and 1224.203.

**1205.403 Requests from Members of Congress.**

The HCA is authorized to approve the release of certain contract information to Members of Congress under FAR 5.403.

**Subpart 1205.6—Publicizing Multi-Agency Use Contracts****1205.601 Governmentwide database of contracts.**

(b) The OA HCA is responsible for complying with the requirements of FAR 5.601(b).

**PART 1206—COMPETITION REQUIREMENTS****Subpart 1206.2—Full and Open Competition After Exclusion of Sources**

Sec.

1206.202 Establishing or maintaining alternative sources.

**Subpart 1206.3—Other Than Full and Open Competition**

1206.302 Circumstances permitting other than full and open competition.

1206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

1206.302–7 Public interest.

**Subpart 1206.5—Advocates for Competition**

1206.501 Requirement.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1206.2—Full and Open Competition After Exclusion of Sources****1206.202 Establishing or maintaining alternative sources.**

(a) The head of the contracting activity (HCA) is delegated authority to exclude a particular source from a contract action in order to establish or maintain an alternative source under the conditions listed in FAR 6.202(a).

(b) The HCA is also delegated authority to approve a Determination and Findings (D&F) in support of a contract action awarded under the authority of FAR 6.202(a).

**Subpart 1206.3—Other Than Full and Open Competition****1206.302 Circumstances permitting other than full and open competition.**

**1206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

(b)(4) The HCA is authorized to determine that only specified makes and models of technical equipment and parts will satisfy the agency's needs under FAR 6.302–1(b)(4).

**1206.302–7 Public interest.**

(a)(2) The authority under FAR 6.302–7 whereby full and open competition need not be provided for when determined that it is not in the public interest in a particular acquisition is reserved by the Secretary and may not be delegated. A written determination made and signed by the Secretary shall be included in the contract file.

(c)(3) The contracting officer shall prepare a justification to support the determination under FAR 6.302–7(c)(3).

**Subpart 1206.5—Advocates for Competition****1206.501 Requirement.**

The DOT Agency Advocate for Competition is the Deputy Assistant Secretary for Administration.

**PART 1207—ACQUISITION PLANNING****Subpart 1207.3—Contractor Versus Government Performance**

Sec.

1207.305 Solicitation provisions and contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1207.3—Contractor Versus Government Performance****1207.305 Solicitation provisions and contract clause.**

The contracting officer may insert clause 1252.237–73, Key Personnel, in solicitations and contracts when the acquisition is conducted pursuant to OMB Circular A–76 and meets the clause prescription requirements at 1237.110–70(b).

**PART 1209—CONTRACTOR QUALIFICATIONS****Subpart 1209.4—Debarment, Suspension, and Ineligibility**

Sec.

1209.400 Scope of subpart.

1209.403 Definitions.

1209.405 Effect of listing.

1209.405–1 Continuation of current contracts.

1209.405–2 Restrictions on subcontracting.

1209.406 Debarment.

1209.406–1 General.

1209.406–3 Procedures.

1209.406–4 Period of debarment.

1209.407 Suspension.

1209.407–1 General.

1209.407–3 Procedures.

1209.470 Fact-finding procedures.

1209.471 Appeals.

**Subpart 1209.5—Organizational and Consultant Conflicts of Interest**

1209.507 Solicitation provisions and contract clause.

1209.507–270 Contract clauses.

**Subpart 1209.6—Contractor Team Arrangements**

1209.602 General.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1209.4—Debarment, Suspension, and Ineligibility****1209.400 Scope of subpart.**

This subpart provides DOT's policy and procedures for the debarment and suspension of contractors.

**1209.403 Definitions.**

As used in this subpart—

*DOT Order 4200.5G* means the DOT order establishing DOT's internal procedures for Suspension and Debarment, and Ineligibility Policies.

*Senior Accountable Official (SAO) for Suspension and Debarment* means the Senior Procurement Executive (SPE), as delegated by the Secretary of DOT, for all suspensions and debarments within DOT. The SAO sets forth standards for suspension and debarment policies and procedures for the Department of Transportation, excluding the Office of Inspector General (OIG).

*Suspension and Debarment Coordinator (SDC)* means the program manager for the Suspension and Debarment Program at each OA and Office of the Secretary of Transportation. The SDC advises the Suspending and Debarring Official (SDO). The SDC coordinates all materials for presentation to the SDO for proposed suspension or debarment activities, enters information regarding any administrative agreement into the Federal Awardee Performance and Integrity Information System (FAPIS), and enters information regarding suspensions and debarments into *SAM.gov*.

*Suspending and Debarring Official (SDO)* means the individual designated responsibility as authorized by the Secretary of DOT to impose procurement suspensions and debarments, exclusions, and other related matters pursuant to FAR part 9. Each OA and the OST has separately appointed SDOs. The SPE serves as the SDO for OST. A list of the OA-appointed SDOs is maintained on the OSPE website at <https://www.transportation.gov/assistant-secretary-administration/procurement/suspension-and-debarment>.

**1209.405 Effect of listing.**

(a) The SDO is authorized to make a written determination of compelling reasons to solicit offers from, award contracts to, or consent to subcontract

with contractors debarred, suspended, or proposed for debarment and that has an active exclusion record in the System for Award Management (SAM) in accordance with FAR 9.405.

(e)(2) The SDO is authorized to make a written determination of compelling reasons to consider a bid or offer from a contractor whose name or company is included on the listing.

(3) The SDO is authorized to make a written determination of compelling reasons for a contracting officer to consider proposals, quotations, or offers received from any listed contractor that have an active exclusion record in SAM, and that such proposals, quotations, or offers may be evaluated for award or included in the competitive range, and, if applicable, discussions conducted with a listed offeror as set forth in FAR 9.405(e)(3).

**1209.405–1 Continuation of current contracts.**

(a) Notwithstanding the suspension, proposed debarment, or debarment of a contractor, contracting officers may continue contracts or subcontracts in existence at the time the contractor was suspended, proposed for debarment, or debarred, if authorized by the SDO and the SDO makes a written determination, consistent with the procedures described in FAR 9.405–1(a) setting forth the compelling reasons for continuing such contract(s) and placing order(s).

(b) The SDO is delegated the authority on behalf of the Secretary of DOT to make the written determination required under FAR 9.405–1(b).

**1209.405–2 Restrictions on subcontracting.**

(a) The SDO is delegated the authority on behalf of the Secretary of DOT to authorize contracting officers to consent to subcontracts with contractors debarred, suspended, or proposed for debarment as required by FAR 9.405–2(a).

**1209.406 Debarment.****1209.406–1 General.**

(c) The OST Suspending and Debarring Official (SDO) and each OA-appointed SDO (*see* 1209.403) is authorized to continue business dealings between the agency and a contractor that is debarred or proposed for debarment under FAR 9.406–1(c), except under FAR 23.506(e) if the SDO has made a written determination of compelling reasons justifying the continued business dealings.

(d)(1) The SDO's authority includes debarments from contracts for the purchase of Federal personal property

pursuant to the Federal Management Regulation at 41 CFR 102–117.295 (*see* FAR 9.406–1(d)(1) through (2)).

**1209.406–3 Procedures.**

Contracting officers and contracting activities shall comply with DOT Order 4200.5G, Suspension and Debarment, and Ineligibility Policies, and this subpart to include the following procedures—

(a) *Investigation and referral.* Any individual may submit a referral to debar an individual or contractor to the cognizant SDO (the debarring official) (*see* 1209.403). The referral for debarment shall be supported with evidence of a cause for debarment listed in FAR 9.406–2 and this subpart. The contracting officer shall promptly report a proposed debarment action directly to the SDO. Upon review by the SDO, if the matter involves possible criminal or fraudulent activities, the SDO shall also refer the matter to the DOT Office of Inspector General to ensure coordination of appropriate activity. The report shall contain the following information:

(1) The DOT official OA code to identify the OA taking action is as follows: DOT (general) (DOT–OST); Federal Aviation Administration (DOT–FAA); Federal Highway Administration (DOT–FHWA); Federal Motor Carrier Safety Administration (DOT–FMCSA); Federal Railroad Administration (DOT–FRA); Federal Transit Administration (DOT–FTA); Maritime Administration (DOT–MARAD); National Highway Traffic Safety Administration (DOT–NHTSA); Pipeline and Hazardous Materials Safety Administration (DOT–PHMSA); Office of the Assistant Secretary for Research and Technology (OST–R); and Great Lakes St. Lawrence Development Corporation (GLS).

(2) Name, address, and telephone number for the point of contact for the activity making the report.

(3) Name and address of the contractor.

(4) Names and addresses of the members of the board, principal officers, partners, owners, and managers.

(5) Names and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship.

(6) For each contract affected by the conduct being reported—

(i) The contract number;

(ii) Description of supplies or services;

(iii) The amount;

(iv) The percentage of completion;

(v) The amount paid to the contractor;

(vi) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(vii) The amount due to the contractor.

(7) For any other contracts outstanding with the contractor or any of its affiliates—

- (i) The contract number(s);
- (ii) The amount(s);
- (iii) The amounts paid to the contractor;

(iv) Whether the contract(s) is assigned under the Assignment of Claims Act and, if so, to whom; and

(v) The amount(s) due the contractor.

(8) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor.

(9) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated).

(10) The comments and recommendations of the contracting officer and each higher-level contracting review authority regarding—

- (i) Whether to suspend or debar the contractor;
- (ii) Whether to apply limitations to the suspension or debarment;
- (iii) The period of any recommended debarment; and

(iv) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contract is not included).

(11) When appropriate, as an enclosure to the report—

- (i) A copy or extracts of each pertinent contract;
- (ii) Witness statements or affidavits;
- (iii) Copies of investigative reports;
- (iv) Certified copies of indictments, judgments, and sentencing actions; and
- (v) Any other appropriate exhibits or documents.

(b) *Decisionmaking process.* When the SDO finds preponderance of the evidence for a cause for debarment, as listed in FAR 9.406–2 or this subpart, the contracting officer in conjunction with the SDC shall prepare a recommendation and draft notice of proposed debarment for the SDO's consideration. The contractor (and any specifically named affiliates) are provided an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment as set forth in paragraph (d) of this section.

(c) *Notice of proposal to debar.* DOT shall send the notice of proposed debarment to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for

confirmation of delivery to include by mail, to the last known street address, to the last known facsimile numbers, or to the last known email address. In the case of a contractor, DOT may send the notice of proposed debarment to the contractor, any partner, principal, officer, director, owner or co-owner, or joint venture; to the contractor's identified counsel for purposes of administrative proceedings; or to the contractor's agent for the service of process. If sent by email, it shall be sent to the last known email addresses for all three, if known. Additionally, for each specifically named affiliate, the notice shall be sent to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agency for service of process. If sent by email, it shall be sent to the last known email addresses for all three, if known. The SDO shall also ensure that the appropriate parties are listed as excluded in the System for Award Management (SAM) in accordance with FAR 9.404.

(d) *Debarring official's decision.* (1) If DOT does not receive a reply from the contractor within 30 calendar days after sending the notice of proposed debarment, the SDC shall prepare a recommendation in conjunction with the cognizant contracting officer, and refer the case to the SDO for a decision on whether to debar based on the information available. If DOT receives a reply from the contractor within 30 calendar days after sending the notice of proposed debarment, the SDC in conjunction with the cognizant contracting officer shall consider the information in the reply before the SDC makes their recommendation to the SDO.

(2) The SDO reviews submittals and case documents, and acts in accordance with DOT Order 4200.5G and the General DOT Guidelines for Suspension and Debarment, paragraph 12c.

(i) The SDO, upon the request of the contractor proposed for debarment, shall, as soon as practicable, allow the contractor an opportunity to appear before the SDO to present information or argument, in person or through a representative. The contractor may supplement the oral presentation with written information and argument. This information submitted by a contractor proposed for debarment is known as a Presentation of Matters in Opposition as set forth in DOT Order 4200.5G. DOT shall conduct the proceeding in an informal manner and without requirement for a transcript. The SDO may use flexible procedures to allow a contractor to present matters in

opposition via telephone or internet. If so, the debarring official should change the notice in paragraph (c) of this section to include those flexible procedures.

(ii) If the SDO finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, the SDC shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO shall conduct a fact-finding proceeding or shall refer the dispute to a designee for resolution pursuant to 1209.470. The SDC shall provide the contractor or individual the disputed material fact(s).

(iii) If the proposed debarment action is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 1209.470, the SDO shall make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written arguments presented or submitted to the SDC by the contractor.

(e) *Notice of debarring official's decision.* In actions processed under FAR 9.406 where no suspension is in place and where a fact-finding proceeding is not required, DOT shall make the final decision on the proposed debarment within 30 business days after receipt of any information and argument submitted by the contractor by the means of delivery set forth in paragraph (c) of this section, unless the SDO extends this period for good cause.

#### **1209.406–4 Period of debarment.**

(b) The SDC, in conjunction with the contracting officer, may submit a recommendation to the SDO to extend or reduce the period of debarment, or amend the scope of the debarment, imposed under FAR 9.406.

#### **1209.407 Suspension.**

##### **1209.407–1 General.**

(b) For the purposes of FAR 9.407–1, the SDO is the suspending official under the Federal Management Regulation at 41 CFR 102–117.295.

(d) The SDO is authorized to make a written determination of compelling reasons justifying continuing business dealings between the agency and a contractor that is suspended. However, in accordance with FAR 23.506(e), only the Secretary of Transportation may

waive the suspension of contract payments, termination of a contract for default, or suspension of a contractor for actions under FAR subpart 23.5 and FAR 23.506.

#### 1209.407–3 Procedures.

Contracting officers and contracting activities shall comply with DOT Order 4200.5G, Suspension and Debarment, and Ineligibility Policies, and this subpart to include the following procedures—

(a) *Investigation and referral.* Any individual may submit a referral to suspend an individual or contractor to the SDC or SDO (the debarring official) (see 1209.403). The SDC shall promptly report, in writing, a proposed suspension action directly to the SDO. Upon review by the SDO, if the matter involves possible criminal or fraudulent activities, the SDO shall also refer the matter to the DOT OIG to ensure coordination of appropriate activity.

(b) *Decisionmaking process.* When the SDC finds adequate evidence of a cause for suspension, as listed in FAR 9.407–2, the SDC shall prepare a recommendation and draft notice of suspension for the SDO's consideration. After receipt of the report from the SDC, the SDO may request from interested parties, including the contractor if deemed appropriate, a meeting or additional supporting information to assist in the suspension decision. The SDC creates a case in the DOT Suspension and Debarment Tracking System as set forth in DOT Order 4200.5G. The contractor (and any specifically named affiliates) are provided an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment as set forth in paragraph (d) of this section.

(c) *Notice of suspension.* DOT shall send the notice of suspension to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery to include by mail, to the last known street address, to the last known facsimile numbers, or to the last known email address. In the case of a contractor, DOT may send the notice of suspension to the contractor, any partner, principal, officer, director, owner or co-owner, or joint venture; to the contractor's identified counsel for purposes of administrative proceedings; or to the contractor's agent for the service of process. If sent by email, it shall be sent to the last known email addresses for all

three, if known. Additionally, for each specifically named affiliate, the notice shall be sent to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agency for service of process. If sent by email, it shall be sent to the last known email addresses for all three, if known. The SDO shall also ensure that the appropriate parties are listed as excluded in SAM in accordance with FAR 9.404. After reviewing the SDC's report, and any additional information received in accordance with paragraph (b) of this section, the SDO shall prepare and coordinate with legal counsel a written notice of suspension.

(5) The SDO, upon the request of the contractor suspended, shall, as soon as practicable, allow the contractor an opportunity to appear before the SDO to present information or argument, in person or through a representative. The contractor may supplement the oral presentation with written information and argument. DOT shall conduct the proceeding in an informal manner and without requirement for a transcript.

(6)(i) If the SDC finds the contractor's or individual's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, or for the purposes of FAR 9.407–3(b)(2), in actions not based on an indictment, the SDC shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO shall conduct a fact-finding proceeding or refer the dispute to a designee for resolution pursuant to 1209.470. The SDC shall provide the contractor or individual the information that established the dispute of material fact(s) in advance of the fact-finding proceeding, in the event the contractor would like to add to the facts prior to the decision of the SDO.

(ii) If the suspension is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 1209.470, the SDO shall make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written arguments presented or submitted by the contractor. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript.

(d) *Suspending official's decision.* The SDO shall notify the contractor of the decision whether to impose a suspension. The SDO shall then forward

the original signed decision to the contracting officer for inclusion in the contract file. The SDO reviews submittals and case documents, and acts in accordance with DOT Order 4200.5G and the General DOT Guidelines for Suspension and Debarment, paragraph 12c. The SDO may use flexible procedures to allow a contractor to present matters in opposition via telephone or internet. If so, the debarring official should change the notice in paragraph (c) of this section to include those flexible procedures.

#### 1209.470 Fact-finding procedures.

The provisions of this section constitute the procedures to be used to resolve genuine disputes of material fact pursuant to 1209.406–3 and 1209.407–3. The SDC shall establish the date for the fact-finding hearing, normally to be held within 30 business days after notifying the contractor or individual that the SDO has determined a genuine dispute of material fact(s) exists.

(a) The Government's representative and the contractor shall each have an opportunity to present evidence relevant to the genuine dispute(s) of material fact identified by the SDO. The contractor or individual may appear in person or through counsel at the fact-finding hearing and should address all defenses, contested facts, admissions, remedial actions taken, and, if a proposal to debar is involved, mitigating and aggravating factors. The contractor or individual may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. The fact-finding proceeding is an informal evidentiary hearing, during which the Rules of Evidence and Civil Procedure do not apply. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the factfinder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder shall prepare a written finding(s) of fact for the record by a preponderance of the evidence for proposed debarments, and by adequate evidence for suspensions. A copy of the findings of fact shall be provided to the SDO, the Government's representative, and the contractor or individual. The

SDO will consider the written findings of fact in the decision regarding the suspension or proposed debarment.

#### 1209.471 Appeals.

Based on the decision by the SDO, the respondent may elect to request reconsideration as provided for in paragraph (a) of this section. If the request for reconsideration is denied, the respondent may seek judicial review as provided for in paragraph (b) of this section.

(a) *Request for reconsideration.* Upon receiving a final decision to debar from the SDO, a debarred individual or entity may ask the SDO to reconsider the debarment decision or to modify the debarment by reducing the time period or narrowing the scope of the debarment. This request must be in writing and supported with documentation.

(b) *Judicial review.* A suspended or debarred individual or entity may seek judicial review upon denial of a request for reconsideration.

#### Subpart 1209.5—Organizational and Consultant Conflicts of Interest

##### 1209.507 Solicitation provisions and contract clause.

##### 1209.507–270 Contract clauses.

(a) In accordance with FAR 9.507–2, the contracting officer shall insert a clause substantially the same as the clause at 1252.209–70, Organizational and Consultant Conflicts of Interest, as applicable, in solicitations and contracts.

(b) In accordance with FAR 9.507–2, the contracting officer shall insert a clause substantially the same as the clause at 1252.209–71, Limitation of Future Contracting, as applicable, in solicitations and contracts.

#### Subpart 1209.6—Contractor Team Arrangements

##### 1209.602 General.

(c) Contracting officers shall require offerors to disclose teaming arrangements as a part of any offer. The teaming arrangement shall be evaluated as a part of overall prime contractor responsibility, as well as under the technical and/or management approach evaluation factor where applicable.

#### PART 1211—DESCRIBING AGENCY NEEDS

##### Subpart 1211.2—Using and Maintaining Requirements Documents

Sec.

1211.204 Solicitation provisions and contract clauses.

1211.204–70 Contract clauses.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

##### Subpart 1211.2—Using and Maintaining Requirements Documents

##### 1211.204 Solicitation provisions and contract clauses.

##### 1211.204–70 Contract clauses.

The contracting officer shall insert the clause at 1252.211–70, Index for Specifications, when an index or table of contents may be furnished with the specification.

#### PART 1212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

##### Subpart 1212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

Sec.

1212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

##### Subpart 1212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

##### 1212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f) The following DOT provisions and clauses are authorized for use in acquisitions of commercial products or commercial services when required by the individual provision or clause prescription:

(1) 1252.201–70, Contracting Officer's Representative.

(2) 1252.204–70, Contractor Personnel Security and Agency Access.

(3) 1252.209–70, Organizational and Consultant Conflicts of Interest.

(4) 1252.209–71, Limitation of Future Contracting.

(5) 1252.211–70, Index for Specifications.

(6) 1252.216–70, Evaluation of Offers Subject to an Economic Price Adjustment Clause.

(7) 1252.216–71, Determination of Award Fee.

(8) 1252.216–72, Award Fee Plan.

(9) 1252.216–73, Distribution of Award Fee.

(10) 1252.216–74, Settlement of Letter Contract.

(11) 1252.222–70, Strikes or Picketing Affecting Timely Completion of the Contract Work.

(12) 1252.222–71, Strikes or Picketing Affecting Access to a DOT Facility.

(13) 1252.223–70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits.

(14) 1252.223–71, Accident and Fire Reporting.

(15) 1252.223–73, Seat Belt Use Policies and Programs.

(16) 1252.232–70, Electronic Submission of Payment Requests.

(17) 1252.237–70, Qualifications of Contractor Employees.

(18) 1252.237–71, Certification of Data.

(19) 1252.237–72, Prohibition on Advertising.

(20) 1252.237–73, Key Personnel.

(21) 1252.239–70, Security

Requirements for Unclassified Information Technology Resources.

(22) 1252.239–71, Information Technology Security Plan and Accreditation.

(23) 1252.239–72, Compliance with Safeguarding DOT Sensitive Data Controls.

(24) 1252.239–73, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(25) 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting.

(26) 1252.239–75, DOT Protection of Information About Individuals, PII, and Privacy Risk Management Requirements.

(27) 1252.239–76, Cloud Computing Services.

(28) 1252.239–77, Data Jurisdiction.

(29) 1252.239–78, Validated

Cryptography for Secure Communications.

(30) 1252.239–79, Authentication, Data Integrity, and Non-Repudiation.

(31) 1252.239–80, Audit Record Retention for Cloud Service Providers.

(32) 1252.239–81, Cloud Identification and Authentication (Organizational Users) Multi-Factor Authentication.

(33) 1252.239–82, Identification and Authentication (Non-Organizational Users).

(34) 1252.239–83, Incident Reporting Timeframes.

(35) 1252.239–84, Media Transport.

(36) 1252.239–85, Personnel Screening—Background Investigations.

(37) 1252.239–86, Boundary Protection—Trusted Internet Connections.

(38) 1252.239–87, Protection of Information at Rest.

(39) 1252.239–88, Security Alerts, Advisories, and Directives.

(40) 1252.239–89, Technology Modernization.

(41) 1252.239–90, Technology Upgrades/Refreshment.

(42) 1252.239–91, Records Management.

(43) 1252.239–92, Information and Communication Technology Accessibility Notice.

(44) 1252.239–93, Information and Communication Technology Accessibility.

(45) 1252.242–70, Dissemination of Information—Educational Institutions.

(46) 1252.242–71, Contractor Testimony.

(47) 1252.242–72, Dissemination of Contract Information.

### Subchapter C—Contracting Methods and Contract Types

#### PART 1213—SIMPLIFIED ACQUISITION PROCEDURES

##### Subpart 1213.70—Department of Transportation Procedures for Acquiring Training Services

Sec.

1213.7000 Applicability.

1213.7001 Solicitation provision and contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

##### Subpart 1213.70—Department of Transportation Procedures for Acquiring Training Services

###### 1213.7000 Applicability.

(a) DOT policy at 1237.7000 applies to Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by Governmentwide commercial purchase card. The Governmentwide commercial purchase card may only be used to acquire training services valued at the micro-purchase threshold level or less.

(b) As reflected in 1237.7002, this policy does not apply to training attended by DOT employees that is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one-week course at a university or other private entity, the policy does not apply. DOT does not control the course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course; therefore, no soliciting or advertising of private non-Government training while conducting the contracted-for training is permitted.

###### 1213.7001 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision as prescribed at 1252.237–71, Certification of Data, in all solicitations and requests for quotations, and the clause as prescribed at 1252.237–72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (e.g., purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be adopted by reference, if the contracting officer determines it contains information sufficient to reliably describe the certified data submitted. For example, this type of information includes dated material such as resumes and company or personnel qualifications.

#### PART 1214—[RESERVED]

#### PART 1215—CONTRACTING BY NEGOTIATION

##### Subpart 1215.4—Contract Pricing

Sec.

1215.404 Proposal analysis.

1215.404–470 Payment of profit or fee.

##### Subpart 1215.6—Unsolicited Proposals

1215.603 General.

1215.604 Agency points of contact.

1215.606 Agency procedures.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

##### Subpart 1215.4—Contract Pricing

###### 1215.404 Proposal analysis.

###### 1215.404–470 Payment of profit or fee.

The contracting officer shall not pay profit or fee on undefinitized contracts or undefinitized contract modifications. Any profit or fee earned shall be paid after the contract or modification is definitized.

##### Subpart 1215.6—Unsolicited Proposals

###### 1215.603 General.

DOT will not pay any costs associated with the preparation of unsolicited

proposals. Proposals that do not meet the definition and applicable content and marking requirements of FAR subpart 15.6 will not be considered under any circumstances and will be returned to the submitter.

###### 1215.604 Agency points of contact.

(a) Unsolicited proposals should be submitted to the responsible OA contracting office for appropriate handling. Specific information concerning the mission of each DOT OA is available online at <https://www.transportation.gov/>. Offerors are urged to contact these contracting/procurement offices prior to submitting a proposal to ensure that the unsolicited proposal reaches the correct contracting office for action. This action will reduce unnecessary paperwork and wasted time for both the Government and offerors.

###### 1215.606 Agency procedures.

The OA contracting office is the designated point of contact for receipt and handling of unsolicited proposals (see 1215.604). The assigned DOT contracting office will review and evaluate the proposal within 30 calendar days, if practicable, in accordance with FAR 15.606–1, Receipt and initial review, to inform the offeror of the reasons for rejection and the proposed disposition of the unsolicited proposal.

#### PART 1216—TYPES OF CONTRACTS

##### Subpart 1216.2—Fixed-Price Contracts

Sec.

1216.203 Fixed-price contracts with economic price adjustment.

1216.203–4 Contract clauses.

1216.203–470 Solicitation provision.

##### Subpart 1216.4—Incentive Contracts

###### 1216.406–70 DOT contract clauses.

##### Subpart 1216.5—Indefinite-Delivery Contracts

###### 1216.505 Ordering.

##### Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–4 Contract clauses.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

##### Subpart 1216.2—Fixed-Price Contracts

###### 1216.203 Fixed-price contracts with economic price adjustment.

###### 1216.203–4 Contract clauses.

###### 1216.203–470 Solicitation provision.

The contracting officer shall insert the provision at 1252.216–70, Evaluation of

Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

#### Subpart 1216.4—Incentive Contracts

##### 1216.406–70 DOT contract clauses.

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1252.216–71, Determination of Award Fee, in all cost-plus-award-fee solicitations and contracts.

(b) The contracting officer shall insert the clause at 1252.216–72, Award Fee Plan, in all cost-plus-award-fee solicitations and contracts.

(c) The contracting officer shall insert the clause at 1252.216–73, Distribution of Award Fee, in all cost-plus-award-fee solicitations and contracts.

#### Subpart 1216.5—Indefinite-Delivery Contracts

##### 1216.505 Ordering.

(b)(8) *Task-order and delivery-order ombudsman.* Unless otherwise designated by the Head of the Operating Administration, the Advocate for Competition for the Operating Administration (OA) is designated as the OA Task and Delivery Order Ombudsman. If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the OA Ombudsman shall provide a written determination of such action to the contracting officer. Issues that cannot be resolved within the OA shall be forwarded to the DOT Task and Delivery Order Ombudsman for review and resolution. The DOT Task and Delivery Order Ombudsman is located in the Office of the Senior Procurement Executive.

#### Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

##### 1216.603 Letter contracts.

##### 1216.603–4 Contract clauses.

The contracting officer shall insert the clause at 1252.216–74, Settlement of Letter Contract, in all definitized letter contracts.

### PART 1217—SPECIAL CONTRACTING METHODS

#### Subpart 1217.70—Fixed-Price Contracts for Vessel Repair, Alteration, or Conversion

Sec.

1217.7000 Definition.

1217.7001 Clauses.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### Subpart 1217.70—Fixed-Price Contracts for Vessel Repair, Alteration, or Conversion

##### 1217.7000 Definition.

*Lay Days* means time allowed to the master of a vessel for loading and unloading the same.

##### 1217.7001 Clauses.

(a) The clause at 1252.217–70, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.

(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at 1252.217–70, Guarantee, is 60 days. In certain instances, it may be advisable for the contracting officer to include a contract clause for a guarantee period longer than 60 days. These instances are as follows—

(i) If, as a result of a full inquiry, the contracting officer determines that there will be no increased costs as a result of a longer guarantee period, the contracting officer may substitute guarantee longer than the usual 60 days; or

(ii) When the contracting officer's inquiry discloses that increased costs will result or are expected to result from a longer guarantee period, the contracting officer shall submit a letter to the Chief of the Contracting Office, requesting approval for use of guarantee period in excess of 60 days. The letter must contain sufficient facts to justify the use of a longer guarantee period. Upon approval, the contracting officer may insert a longer period in the first sentence of the clause at 1252.217–70, Guarantee.

(b) The contracting officer shall insert the following clauses in solicitations and contracts for vessel repair, alteration or conversion:

(1) 1252.217–71, Delivery and Shifting of Vessel.

(2) 1252.217–72, Performance.

(3) 1252.217–73, Inspection and Manner of Doing Work.

(4) 1252.217–74, Subcontracts.

(5) 1252.217–76, Liability and Insurance.

(6) 1252.217–77, Title.

(7) 1252.217–78, Discharge of Liens.

(8) 1252.217–79, Delays.

(9) 1252.217–80, Department of Labor Safety and Health Regulations for Ship Repair.

(c) The contracting officer may insert the clause at 1252.217–75, Lay Days, in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, the District of Columbia, and all territories and possessions of the United States. The contracting officer may also insert the clause at 1252.217–75, Lay Days, in negotiated solicitations and contracts to be performed outside the United States.

#### Subchapter D—Socioeconomic Programs

### PART 1219—SMALL BUSINESS PROGRAMS

#### Subpart 1219.2—Policies

Sec.

1219.201 General policy.

1219.201–70 Procurement goals for small business.

1219.202 Specific policies.

1219.202–70 Procurement Forecast.

#### Subpart 1219.4—Cooperation With the Small Business Administration

1219.401 General.

#### Subpart 1219.5—Set-Asides for Small Business

1219.501 General.

1219.502–8 Rejecting Small Business Administration recommendations.

1219.502–9 Withdrawing or modifying small business set-asides.

#### Subpart 1219.7—The Small Business Subcontracting Program

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1219.705–6 Postaward responsibilities of the contracting officer.

#### Subpart 1219.8—Contracting With The Small Business Administration (the 8(a) Program)

1219.800 General.

1219.815 Release for non-8(a) procurement.

#### Subpart 1219.70—DOT Mentor-Protégé Program

1219.7000 General.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### Subpart 1219.2—Policies

##### 1219.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU) shall be a member of the Senior Executive Service and appointed by the Secretary of Transportation. (15 U.S.C. 637, 644, and 657)

(d) The responsible HCA for each OA shall appoint a Small Business Specialist (SBS). The SBS will assist the OSDBU Director in carrying out the functions and duties prescribed in FAR 19.201(d). A list of DOT SBS is provided at OSDBU's website at <https://www.transportation.gov/osdbu/procurement-assistance/talk-dot-small-business-specialist>.

**1219.201–70 Procurement goals for small business.**

As required by the Small Business Act, the Secretary shall establish annual goals for small business participation in DOT contracts and subcontracts. Each contracting activity in consultation with the OSDBU on behalf of the Secretary shall establish annual goals that present, for that activity, the maximum practicable opportunity for small business concerns to participate in the performance of the activity's contracts and subcontracts.

**1219.202 Specific policies.**

OSDBU is responsible for reviewing procurement strategies and subcontracting efforts, establishing review thresholds and making recommendations to further the implementation of this part. The OSDBU Director may waive review of certain classes of acquisitions that the Director identifies as providing limited or no opportunity for small business participation or may delegate review of such acquisitions to the OA Small Business Specialists.

**1219.202–70 Procurement Forecast.**

The OSDBU shall prepare and maintain DOT's Procurement Forecast in coordination with DOT Operating Administrations. The forecast will be published every year on or before October 1st and can be found at <https://www.transportation.gov/osdbu/procurement-forecast/summary>. Contracting officers and small business specialists will work with the OSDBU to maintain accurate procurement forecast information.

**Subpart 1219.4—Cooperation With the Small Business Administration**

**1219.401 General.**

(a) The OSDBU Director will be the primary point of contact with the U.S. Small Business Administration and facilitate the formulation of policies to ensure maximum practicable opportunities are available to small business concerns in prime and subcontracting opportunities.

**Subpart 1219.5—Set-Asides for Small Business**

**1219.501 General.**

(a) Contracting officers shall set aside to small business concerns acquisitions of supplies or services that have an anticipated dollar value above the micro-purchase threshold but not exceeding the simplified acquisition threshold, as prescribed at FAR 13.003(b)(1). Contracting officers shall set aside proposed acquisitions exceeding the simplified acquisition threshold for small business concerns unless it is determined there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery (see FAR 19.502–2). Contracting officers will document their determination utilizing the DOT Form 4250.1, which will include the results of the market research performed, including justifications.

**1219.502–8 Rejecting Small Business Administration recommendations.**

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative, the contracting officer will coordinate with the OSDBU to submit a written notice to the SBA within 5 working days of the contracting officer's receipt of the recommendation.

**1219.502–9 Withdrawing or modifying small business set-asides.**

(a) If the contracting officer makes a determination before contract award that a set-aside is disadvantageous to the public interest, withdrawal of an individual small business set-aside shall be initiated by giving written notice to the small business specialist, the SBA procurement center representative and the OSDBU stating the reasons for withdrawal.

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be referred to the COCO for review prior to consulting with the assigned SBA representative. The contracting officer shall follow the documentation requirements of FAR 19.506(c).

**Subpart 1219.7—The Small Business Subcontracting Program**

**1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

**1219.705–6 Postaward responsibilities of the contracting officer.**

(f) The Office of Small and Disadvantaged Business Utilization (S–

40) is responsible for acknowledging receipt of, or rejecting, the Summary Subcontract Report (SSR) in the Electronic Subcontracting Reporting System (eSRS).

**Subpart 1219.8—Contracting With the Small Business Administration (the 8(a) Program)**

**1219.800 General.**

(e) The Small Business Administration (SBA) and Department of Transportation (DOT) have entered into a Partnership Agreement (PA) delegating SBA's contract execution and administrative functions to DOT. Contracting officers shall follow the alternate procedures in this subpart, as applicable, to award 8(a) contracts under the PA. (See [https://www.transportation.gov/sites/dot.dev/files/docs/Department%20of%20Transportation\\_Partnership%20Agreement.pdf](https://www.transportation.gov/sites/dot.dev/files/docs/Department%20of%20Transportation_Partnership%20Agreement.pdf).)

(1) The SBA delegates only the authority to sign contracts on its behalf. Consistent with the provisions of the PA, the SBA remains the prime contractor on all 8(a) contracts, continues to determine eligibility of concerns for contract award, and retains appeal rights under FAR 19.810.

(2) The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements as reflected in this subpart.

(3) Contracts awarded under the PA may be awarded directly to the 8(a) participant on either a sole source or competitive basis. An SBA signature on the contract is not required. See FAR 19.811–3 for contract clauses to use.

**1219.815 Release for non-8(a) procurement.**

(b) Contracting officers requesting the release of a requirement for a non-8(a) procurement will follow procedures prescribed at FAR 19.815 and submit requests through the DOT OSDBU Director. The OSDBU Director will submit the request to SBA's Associate Administrator for Business Development for consideration.

**Subpart 1219.70—DOT Mentor-Protégé Program**

**1219.7000 General.**

(a) The Small Business Administration provides general oversight to Federal mentor-protégé programs. However, DOT has its own program tailored to assist small business concerns in the transportation industry to enhance their capability to compete for Federal procurement opportunities. The program is administered by the

DOT Office of Small and Disadvantaged Business Utilization (OSDBU) at <https://www.transportation.gov/osdbu/procurement-assistance/mentor-protége-pilot-program>.

(b) Small business concerns and large DOT prime contractors are encouraged to participate in the Department's Mentor-Protégé Program. Mentor firms provide eligible small business Protégé firms with developmental assistance to enhance their business capabilities and ability to obtain Federal contracts.

(c) Mentor firms are eligible small businesses and large DOT prime contractors or other socioeconomic firms capable of providing developmental assistance. Protégé firms are small businesses as defined in 13 CFR part 121.

(d) Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance that assists Protégé firms. The costs for developmental assistance will not be reimbursed to the Mentor firm.

(e) Mentor and Protégé firms shall submit an evaluation of the overall experience in the program to OSDBU at the conclusion of the agreement or the voluntary withdrawal by either party from the program, whichever occurs first. At the end of each year, the Mentor and Protégé firms will submit a report regarding program accomplishments under their agreement.

(f) Mentor or Protégé firms shall notify OSDBU in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the program.

## **PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

### **Subpart 1222.1—Basic Labor Policies**

Sec.

1222.101 Labor relations.

1222.101-70 Admittance of union representatives to DOT installations.

1222.101-7 1 Contract clauses.

### **Subpart 1222.8—Equal Employment Opportunity**

1222.808 Complaints.

1222.810-70 Contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### **Subpart 1222.1—Basic Labor Policies**

**1222.101 Labor relations.**

**1222.101-70 Admittance of union representatives to DOT installations.**

(a) It is DOT policy to admit labor union representatives of contractor employees to DOT installations to visit work sites and transact labor union business with contractors, their

employees, or union stewards pursuant to existing union collective bargaining agreements. Their presence shall not interfere with the contractor's work progress under a DOT contract, nor violate the safety or security regulations that may be applicable to persons visiting the installation. The union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site.

(b) Whenever a union representative is denied entry to a work site, the person denying entry shall make a written report to the labor advisor for the applicable Operating Administration or to the DOT labor coordinator, the Office of the General Counsel, Office of General Law, within the Office of the Secretary of Transportation, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

### **1222.101-71 Contract clauses.**

(a) When applicable, the contracting officer may insert the clause at 1252.222-70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) When applicable, the contracting officer may insert the clause at 1252.222-71, Strikes or Picketing Affecting Access to a DOT Facility, in solicitations and contracts.

### **Subpart 1222.8—Equal Employment Opportunity**

#### **1222.808 Complaints.**

Contractors shall, in good faith, cooperate with the Department of Transportation in investigations of Equal Employment Opportunity (EEO) complaints processed pursuant to 29 CFR part 1614 and in accordance with clause 1252.222-72 as prescribed in this subpart.

### **1222.810-70 Contract clause.**

The contracting officer shall insert the clause at 1252.222-72, Contractor Cooperation in Equal Employment Opportunity and Anti-Harassment Investigations, in solicitations, contracts, and orders that include the clause at FAR 52.222-26, Equal Opportunity.

## **PART 1223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

### **Subpart 1223.3—Hazardous Material Identification and Material Safety Data**

Sec.

1223.303 Contract clause.

### **Subpart 1223.70—Safety Requirements for Selected DOT Contracts**

1223.7000 Contract clauses.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### **Subpart 1223.3—Hazardous Material Identification and Material Safety Data**

#### **1223.303 Contract clause.**

The contracting officer shall insert the clause at 1252.223-70, Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

### **Subpart 1223.70—Safety Requirements for Selected DOT Contracts**

#### **1223.7000 Contract clauses.**

(a) Where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at 1252.223-71, Accident and Fire Reporting.

(b) For all solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at 1252.223-72, Protection of Human Subjects. Contractors can request copies of applicable Operating Administration (OA)-specific policies regarding the protection of human subjects directly from contracting officers.

(c) In all solicitations and contracts exceeding the simplified acquisition threshold, the contracting officer shall insert the clause at 1252.223-73, Seat Belt Use Policies and Programs.

## **PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

### **Subpart 1224.1—Protection of Individual Privacy**

Sec.

1224.102-70 General.

1224.103 Procedures.

### **Subpart 1224.2—Freedom of Information Act**

1224.203 Policy.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1224.1—Protection of Individual Privacy

#### 1224.102–70 General.

(a) Records maintained in a Privacy Act system of records shall not be released except by the Government or at the Government's direction regardless of whether the Government or a contractor acting on behalf of the Government is maintaining the records. Examples of systems of records are:

(1) Personnel, payroll and background records about any officer or employee of DOT, or other person, including his or her residential address;

(2) Medical histories and medical records concerning individuals, including applications for licenses; and

(3) Any other record containing information about an individual which includes that individual's name or other personal identifier.

(b) Examples of records to which the Privacy Act does not apply are:

(1) Records that are maintained by a contractor on individuals employed by the contractor in the process of providing goods and services to the Federal government; and

(2) Student records generated in connection with the student's attendance (*e.g.*, admission forms, grade reports) at an educational institution contracted by the agency to provide training to students. These records must be similar to those maintained on other students and must not be commingled with records of other students.

#### 1224.103 Procedures.

DOT rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR part 10.

### Subpart 1224.2—Freedom of Information Act

#### 1224.203 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) and the names and addresses of the OA FOIA offices are located in 49 CFR part 7. The DOT FOIA website can be found at <https://www.transportation.gov/foia>. Specific contract award information shall be requested from the FOIA office of the OA making the contract award.

### Subchapter E—General Contracting Requirements

## PART 1227—PATENTS, DATA, AND COPYRIGHTS

### Subpart 1227.3—Patent Rights Under Government Contracts

Sec.

1227.304 Procedures.

1227.304–4 Appeals.

1227.305 Administration of patent rights clauses.

1227.305–4 Protection of invention disclosures.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1227.3—Patent Rights Under Government Contracts

#### 1227.304 Procedures.

##### 1227.304–4 Appeals.

(b) Contractors may appeal agency actions listed at FAR 27.304–4(a)(1), (3), and (4) to the cognizant Head of the Contracting Activity (HCA). Contracting officers shall coordinate actions under this section with the legal counsel of the responsible office. The following procedures apply:

(1) Actions must be appealed within 30 days of receipt of the written statement issued by DOT required by FAR 27.304–4(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA shall issue a determination within 45 days from the date the contractor's appeal is received.

(c) Contractor appeal of decisions rendered under FAR 27.304–4(a)(2) are subject to the following requirements:

(1) Actions must be appealed within 30 days of receipt of the written statement required by FAR 27.304–4(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA may hold an informal hearing if deemed appropriate or at the request of the contractor. The informal hearing shall be held after all fact-finding is completed.

(i) If a hearing is held, DOT shall provide for a transcribed record of the hearing unless transcription is waived as provided for in paragraph (c)(2)(ii) of this section. A copy of the transcript shall be available to the contractor at cost.

(ii) Transcription of the hearing may be waived by agreement of the parties.

(3) The HCA shall designate an impartial fact-finding official. The official conducting the fact-finding shall prepare findings of fact and transmit them to the HCA promptly after the

conclusion of the fact-finding proceeding along with a recommended determination.

(i) A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by mail, to the last known street address, the last known facsimile number, or the last known email address and to the contractor's identified counsel. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the HCA; and, upon request by the contractor, oral arguments will be held before the HCA as part of an informal hearing. The HCA will make the final determination as to whether the initial agency action was appropriate under the relevant laws and procedures (*see* 1227.304–4(c)).

(ii) Any portion of the informal hearing that involves testimony or evidence shall be closed to the public. Agencies shall not disclose any such information obtained during the appeal to persons outside the Government except when such release is authorized by the contractor (assignee or licensee).

(4) The HCA's final determination shall be based on the findings of facts, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The HCA may reject only those facts that have been found clearly erroneous and must explicitly state the rejection and the basis for the contrary finding. The HCA shall provide the contractor (assignee or exclusive licensee) a written determination by certified or registered mail no later than 90 days after fact-finding is completed or no later than 90 days after oral arguments, whichever is later.

#### 1227.305 Administration of patent rights clauses.

##### 1227.305–4 Protection of invention disclosures.

Solicitations and contracts that include a patent rights clause must provide the contractor the means to report inventions made during contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a Department of Defense DD Form 882, Report of Inventions and Subcontracts.

## PART 1228—BONDS AND INSURANCE

### Subpart 1228.1—Bonds and Other Financial Protections

Sec.

1228.106 Administration.

- 1228.106-470 Contract clause-notification of payment bond protection.  
 1228.106-6 Furnishing information.  
 1228.106-70 Execution and administration of bonds.  
 1228.106-71 Performance and payment bonds for certain contracts.  
 1228.106-7100 Waiver.  
 1228.106-7101 Exception.

#### Subpart 1228.3—Insurance

- 1228.306 Insurance under fixed-price contracts.  
 1228.306-70 Contracts for lease of aircraft.  
 1228.307-1 Group insurance plans.  
 1228.311-1 Contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### Subpart 1228.1—Bonds and Other Financial Protections

##### 1228.106 Administration.

##### 1228.106-470 Contract clause-notification of payment bond protection.

The contracting officer must insert the clause at 1252.228-74, Notification of Payment Bond Protection, in solicitations and contracts when payment bonds are required.

##### 1228.106-6 Furnishing information.

(c) When furnishing a copy of a payment bond and contract in accordance with FAR 28.106-6(b), the requirement for a copy of the contract may be satisfied by furnishing a pdf of the contract's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by his/her signature, title and name of the Operating Administration using an authenticated electronic signature. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, 49 CFR part 7, and 1224.203.

##### 1228.106-70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond(s), other than an annual bond, shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

##### 1228.106-71 Performance and payment bonds for certain contracts.

##### 1228.106-7100 Waiver.

Pursuant to the authority vested in the Secretary of Transportation by the Bond statute at 40 U.S.C. chapter 31, subchapter III, Bonds (historically known as the Miller Act), the requirements of 40 U.S.C. 3131 *et seq.* are waived, to the extent authorized in accordance with 40 U.S.C. 3134(b).

##### 1228.106-7101 Exception.

A performance and payment bond for the contracts described under 1228.106-7100 may be advantageous in view of unusual circumstances arising in connection with such contracts. Requests for the authority to include the requirement for either a performance or payment bond, or both in the contracts described under 1228.106-7100 shall be submitted by the contracting officer to the HCA, before a solicitation is issued.

#### Subpart 1228.3—Insurance

##### 1228.306 Insurance under fixed-price contracts.

##### 1228.306-70 Contracts for lease of aircraft.

(a) The contracting officer shall insert the clauses at 1252.228-70, Loss of or Damage to Leased Aircraft; 1252.228-71, Fair Market Value of Aircraft; and 1252.228-72, Risk and Indemnities, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training), except in the following circumstances—

(1) When the hourly rental rate does not exceed \$250 and the total rental cost for any single transaction is not in excess of \$2,500;

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(b) As codified, 49 U.S.C. 44112, as amended, provides that an aircraft lessor under a lease of 30 days or more is not liable for injury or death of

persons, or damage or loss of property, unless the aircraft is in the actual possession or control of the lessor and the damage occurs because of—

(1) The aircraft, engine, or propeller; or

(2) The flight of, or an object falling from, the aircraft, engine, or propeller.

(c) On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. To take advantage of this coverage, the Risks and Indemnities clause at 1252.228-72, prescribed in paragraph (d) of this section, shall be used.

(d) The contracting officer shall insert the clause at 1252.228-72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(e) During the performance of a contract for out-service flight training for DOT, whether the instruction to DOT personnel is in leased, contractor-provided, or Government-provided aircraft, contractor personnel shall always, during the entirety of the course of training and operation of the aircraft, remain in command of the aircraft. At no time shall Government personnel or other personnel be permitted to take command of the aircraft. The contracting officer shall insert the clause at 1252.228-73, Command of Aircraft, in any solicitation and contract for out-service flight training, whether performed utilizing DOT-leased aircraft, contractor-provided aircraft, or Government-provided aircraft.

##### 1228.307-1 Group insurance plans.

(a) *Prior approval requirements.* Contractors shall provide plans required by FAR 28.307-1(a) to the contracting officer for approval.

##### 1228.311-1 Contract clause.

The contracting officer shall insert the clause at FAR 52.228-7, Insurance Liability to Third Persons, as prescribed in FAR 28.311-1 unless it is waived by an official one level above the contracting officer.

#### PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

##### Subpart 1231.2—Contracts With Commercial Organizations

Sec.

1231.205 Selected costs.

1231.205–3270 Precontract costs—incurrence of costs.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1231.2—Contracts With Commercial Organizations

#### 1231.205 Selected costs.

#### 1231.205–3270 Precontract costs—incurrence of costs.

(a) The decision to incur precontract costs is the responsibility of the contractor. DOT officials shall not authorize, demand, or require a contractor to incur precontract costs. The contracting officer may advise the prospective contractor that any costs incurred before contract award are at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs may not be made by the Government.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at 1252.231–70, Date of Incurrence of Costs, may be inserted in the resultant contract.

## PART 1232—CONTRACT FINANCING

### Subpart 1232.7—Contract Funding

Sec.

- 1232.770 Incremental funding during a Continuing Resolution.
- 1232.770–1 Scope of section.
- 1232.770–2 Definition.
- 1232.770–3 General.
- 1232.770–4 Policy.
- 1232.770–5 Limitations.
- 1232.770–6 Procedures.
- 1232.770–7 Clause.

#### Subpart 1232.9—Prompt Payment

1232.905–70 Payment documentation and process—form of invoice.

#### Subpart 1232.70—Electronic Invoicing Requirements

- 1232.7000 Scope of subpart.
- 1232.7001 Definition.
- 1232.7002 Electronic payment requests—invoices.
- 1232.7003 Payment system registration.
- 1232.7003–1 Electronic authentication.
- 1232.7004 Waivers.
- 1232.7005 Contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1232.7—Contract Funding

#### 1232.770 Incremental funding during a Continuing Resolution.

##### 1232.770–1 Scope of section.

This section provides policy and procedures for using incremental

funding for fixed-price, time-and-material and labor-hour contracts during a period in which funds are provided to the DOT and its operating administrations under a continuing resolution. Heads of the contracting activities may develop necessary supplemental internal procedures and guidance to advise offerors and contractors of these policies and procedures.

##### 1232.770–2 Definition.

*Continuing Resolution (CR)* means an appropriation, in the form of a joint resolution, that provides budget authority for Federal agencies, specific activities, or both to continue operation until the regular appropriations are enacted. Typically, a continuing resolution is used when legislative action on appropriations is not completed by the beginning of a fiscal year.

##### 1232.770–3 General.

The Anti-Deficiency Act, 31 U.S.C. 1341, and FAR 32.702, state that no officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law. A CR provides funding for continuing projects or activities that were conducted in the prior fiscal year for which appropriations, funds, or other authority was previously made available. Each CR is governed by the specific terms in that specific CR (e.g., duration of the CR) and under certain CRs, the funding amounts available for award of some contract actions are inadequate to fund the entire amounts needed.

##### 1232.770–4 Policy.

(a) A fixed-price, time-and-materials, or labor-hour contract or order for commercial or non-commercial severable services may be incrementally funded when—

(1) Funds are provided to DOT or operating administration under a CR. This includes funds appropriated to DOT or an operating administration, funds appropriated to another entity that will be directly obligated on a DOT contract, and funds in a revolving fund or similar account that will be reimbursed by a customer agency funded by a CR;

(2) The responsible fiscal authority has not allocated sufficient funds to fully fund the contract action that is otherwise authorized to be issued;

(3) There is no statutory restriction that would preclude the proposed use of funds;

(4) Funds are available and unexpired, as of the date the funds are obligated;

(5) Assurance is provided by the responsible financial authority that full funding is anticipated once an appropriations act is enacted; and

(6) The clause prescribed by 1232.770–7 is incorporated into the contract or order.

(b) Incremental funding may be limited to an individual line item(s) or a particular order(s).

##### 1232.770–5 Limitations.

This policy does not apply to contract actions using funds that are not covered by the CR.

##### 1232.770–6 Procedures.

(a) An incrementally funded fixed-price, time-and-materials, or labor-hour contract shall be fully funded once funds are available.

(b) The contracting officer shall ensure that sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for convenience by the Government.

(c) Upon receipt of the contractor's notice under paragraph (c) of the clause at 1252.232–71, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Obligating additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Obligating the full amount of funds needed;

(3) Terminating for convenience, as applicable, the affected line items or contract; or

(4) Considering whether to allot additional funds; and

(i) The contractor is entitled by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(d) Upon learning that the contract will receive no further funds by the date provided in the notice under paragraph (c) of the clause at 1252.232–71, Limitation of Government's Obligation, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate the affected line items or contract, as applicable, for the convenience of the Government.

**1232.770-7 Clause.**

(a) The contracting officer shall insert the clause at 1252.232-71, Limitation of Government's Obligation, in—

(1) Solicitations and contracts for severable services when incremental funding of a fixed-price, time-and-material, or labor-hour contract due to a CR is anticipated; or

(2) Contracts or orders for severable services when incremental funding of a fixed-price, time-and-material, or labor-hour contract is authorized and DOT or its operating administrations are operating under a CR (see 1232.770-4).

(b) The contracting officer shall insert the information required in paragraphs (a) and (c) of clause 1252.232-71.

Contracting officers are authorized, in appropriate cases, to revise paragraph (a) of clause 1252.232-71 to specify the

work required under the contract, in lieu of using contract line item numbers, as well as revise paragraph (c) of the clause to specify a different notification period and percentage. The 30-day period may be varied up to 90 days, and the 75 percent can be varied from 75 up to 85 percent.

**Subpart 1232.9—Prompt Payment**

**1232.905-70 Payment documentation and process—form of invoice.**

(a) Under fixed-price contracts, the contracting officer shall require the contractor to submit an invoice or voucher on any form or format meeting FAR 32.905(b) requirements.

(b) Under other than fixed-price contracts, the contracting officer shall require the contractor to submit the

Standard Form (SF) 1034, Public Voucher for Purchases and Services Other Than Personal, and the SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), to request payments. The forms must be completed as required by figure 1 to this section, Instructions for Completing the SF 1034, and figure 2 to this section, Instructions for Completing the SF 1035.

**Figure 1 to 1232.905-70**

*Instructions for Completing the SF 1034*

The SF 1034, Public Voucher for Purchases and Services Other Than Personal, shall be completed in accordance with the below instructions. The numbered items correspond to the entries on the form.

Caption on the SF 1034	Data to be inserted in the block
1. U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION.	Name and address of the contracting office which issued the contract.
2. DATE VOUCHER PREPARED .....	Date voucher submitted to the designated billing office cited under the contract or order.
3. CONTRACT NO. AND DATE .....	Contract No. and, when applicable, the Order No. and date as shown on the award document.
4. REQUISITION NO. AND DATE .....	Leave blank or fill-in in accordance with the instructions in the contract.
5. VOUCHER NO .....	Start with "1" and number consecutively. A separate series of consecutive numbers must be used beginning with "1" for each contract number or order number (when applicable). Note: Insert the word "FINAL" if this is the last voucher.
6. SCHEDULE NO.; PAID BY; DATE INVOICE RECEIVED; DISCOUNT TERMS; PAYEE'S ACCOUNT NO.; SHIPPED FROM/TO; WEIGHT; GOVERNMENT B/L.	Leave all these blocks blank.
7. PAYEE'S NAME AND ADDRESS .....	Name and address of contractor as it appears on the contract. If the contract is assigned to a bank, also show "CONTRACT ASSIGNED" below the name and address of the contractor.
8. NUMBER AND DATE OF ORDER .....	Leave blank. (See #3 above.)
9. DATE OF DELIVERY OR SERVICE .....	The period for which the incurred costs are being claimed (e.g., month and year; beginning and ending date of services, etc.).
10. ARTICLES OR SERVICES .....	Insert the following: "For detail, see the total amount of the claim transferred from the attached SF 1035, page X of X." One space below this line, insert the following: "COST REIMBURSABLE-PROVISIONAL PAYMENT."
11. QUANTITY; UNIT PRICE; (COST; PER) .....	Leave blank.
12. AMOUNT .....	Insert the total amount claimed from the last page of the SF 1035.
Payee must NOT use the space below .....	Do NOT write or type below this line.

**Figure 2 to 1232.905-70**

*Instructions for Completing the SF 1035*

The SF 1035, Public Voucher for Purchases and Services Other Than Personal (Continuation Sheet), shall be completed in accordance with the below instructions.

1. Use the same basic instructions for the SF 1035 as used for the SF 1034.

Ensure that the contract and, if applicable, order number, are shown on each continuation sheet. Use as many sheets as necessary to show the information required by the contract, contracting officer, or responsible audit agency; however, if more than one sheet

of SF 1035 is used, each sheet shall be in numerical sequence.

2. The following items are generally entered below the line with Number and Date of Order; Date of Delivery or Service; Articles or Services; Quantity; Unit Price; and Amount (but do not necessarily tie to these captions).

3. Description of data to be inserted as it applies to the contract or order number including the CLIN or SLIN.

a. Show, as applicable, the target or estimated costs, target or fixed-fee, and total contract value, as adjusted by any modifications to the contract or order. The FAR permits the contracting officer to withhold a percentage of fixed fee until a reserve is set aside in an amount

that is considered necessary to protect the Government's interest.

b. Show the following costs and supporting data (as applicable) to the contract or order:

(1) *Direct Labor.* List each labor category, rate per labor hour, hours worked, and extended total labor dollars per labor category.

(2) *Premium Pay/Overtime.* List each labor category, rate per labor hour, hours worked, and the extended total labor dollars per labor category. *Note:* Advance written authorization must be received from the contracting officer to work overtime or to pay premium rates; therefore, identify the contracting

officer's written authorization to the contractor.

(3) *Fringe Benefits*. If fringe benefits are included in the overhead pool, no entry is required. If the contract allows for a separate fringe benefit pool, cite the formula (rate and base) in effect during the time the costs were incurred. If the contract allows for billing fringe benefits as a direct expense, show the actual fringe benefit costs.

(4) *Materials, Supplies, Equipment*. Show those items normally treated as direct costs. Expendable items need not be itemized and may be grouped into major classifications such as office supplies. However, items valued at \$5,000 or more must be itemized. See FAR part 45, Government Property, for reporting of property.

(5) *Travel*. List the name and title of traveler, place of travel, and travel dates. If the travel claim is based on the actual costs expended, show the amount for the mode of travel (*i.e.*, airline, private auto, taxi, etc.), lodging, meals, and other incidental expenses separately, on a daily basis. These actual costs must be supported with receipts to substantiate the costs paid. Travel costs for consultants must be shown separately and also supported.

(6) *Other Direct Costs*. Itemize those costs that cannot be placed in categories (1) through (5) above. Categorize these costs to the extent possible.

(7) *Total Direct Costs*. Cite the sum of categories (1) through (6) above.

(8) *Overhead*. Cite the rate, base, and extended amount.

(9) *G&A Expense*. Cite the rate, base, and extended amount.

(10) *Total Costs*. Cite the sum of categories (7) through (9) above.

(11) *Fee*. Cite the rate, base, and extended amount.

(12) *Total Cost and Fee Claimed*. Enter this amount on the SF 1034.

### Completion Voucher

The completion (final) voucher is the last voucher to be submitted for incurred, allocable, and allowable costs expended to perform the contract or order. This voucher should include all contract reserves, allowable cost withholdings, balance of fixed fee, etc. However, the amount of the completion voucher when added to the total amount previously paid cannot exceed the total amount of the contract.

### Subpart 1232.70—Electronic Invoicing Requirements

#### 1232.7000 Scope of subpart.

This subpart prescribes policy and procedures for submitting and processing payment requests in electronic form.

#### 1232.7001 Definition.

*Payment request*, as used in this subpart, means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation.

#### 1232.7002 Electronic payment requests—invoices.

(a) *Requirements*. Contracts shall require the electronic submission of payment requests, except for—

(1) Purchases paid for with a Governmentwide commercial purchase card;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise classified information or national security; or

(3) As directed by the contracting officer to submit payment requests by mail.

(b) *Alternate procedures*. Where a contract requires the electronic submission of invoices, the contracting officer may authorize alternate procedures only if the contracting officer makes a written determination that the Department of the Transportation (DOT) is unable to receive electronic payment requests or provide acceptance electronically and it is approved one level above the contracting officer.

(c) *DOT electronic invoicing system*. The Department of Transportation utilizes the DELPHI invoicing System. The DELPHI module for submitting invoices is called *iSupplier*. Except as provided in paragraphs (a) and (b) of this section, contracting officers and DOT finance officials shall process electronic payment submissions through the DELPHI System and the DELPHI module for submitting invoices, *iSupplier*. *iSupplier* is also the official system of record for DOT payment requests. If the requirement for electronic submission of payment requests is waived under paragraph (a) or (b) of this section, the contract or alternate payment authorization, as applicable, shall specify the form and method of payment request submission.

#### 1232.7003 Payment system registration.

##### 1232.7003–1 Electronic authentication.

Access to DELPHI is granted with electronic authentication of credentials (name & valid email address) utilizing the General Services Administration (GSA) credentialing platform *login.gov*. Vendors submitting invoices will be required to submit invoices via *iSupplier* (DELPHI) and authenticated via *www.login.gov*.

#### 1232.7004 Waivers.

If a vendor is unable to utilize DOT's DELPHI electronic invoicing system, DOT may consider waivers on a case-by-case basis. Vendors should contact their COR for procedures, or access the DELPHI website at <http://www.dot.gov/cfo/delphi-invoicing-system.html>.

#### 1232.7005 Contract clause.

The contracting officer shall insert the clause at 1252.232–70, Electronic Submission of Payment Requests, in solicitations and contracts exceeding the micro-purchase threshold, except those for which the contracting officer has directed or approved otherwise under 1232.7002, and those paid with a Governmentwide commercial purchase card.

## PART 1233—PROTESTS, DISPUTES, AND APPEALS

### Subpart 1233.1—Protests

Sec.

1233.103 Protests to the agency.

1233.104 Protests to GAO.

### Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

1233.214 Alternative dispute resolution (ADR).

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1233.1—Protests

#### 1233.103 Protests to the agency.

(c) DOT Operating Administrations (OAs) shall consider the use of alternative dispute resolution (ADR) in all agency protest actions.

#### 1233.104 Protests to GAO.

The protest process at the Government Accountability Office (GAO) may include ADR assistance by GAO. The contracting officer shall, with advice of counsel, explore the possibility of using ADR for all GAO protests.

### Subpart 1233.2—Disputes and Appeals

#### 1233.211 Contracting officer's decision.

(a)(4)(v) In accordance with FAR 33.211(a)(4)(i) through (vi), contracting officers shall include in a statement of the contracting officer's decision referenced at FAR 33.211(a)(4)(iv), paragraphs substantially as follows:

“This is the final decision of the Contracting Officer. You may appeal this decision to the Civilian Board of Contract Appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Civilian Board of Contract Appeals as set forth below and provide a

copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

*Where to File:* All filings must be submitted to the Clerk of the Board. Filings shall be to Civilian Board of Contract Appeals, 1800 F Street NW, Washington, DC 20405 in any of the ways as set forth at their website at <https://cbca.gov/howto/index.html>.

With regard to appeals to the Civilian Board of Contract Appeals, you may, solely at your election, proceed under the board's—

(1) Small claim procedure for claims of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or

(2) Accelerated procedure for claims of \$100,000 or less.

Instead of appealing to the Civilian Board of Contract Appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in 41 U.S.C. 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision.”

#### **1233.214 Alternative dispute resolution (ADR).**

(c) The Administrative Dispute Resolution Act (ADRA) of 1990, Public Law 101–552, as reauthorized by the Administrative Dispute Resolution Act (ADRA) of 1996, Public Law 104–320, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, either before or after appeal, and for other purposes. ADR procedures may be used when—

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen); and either

(2) Prior to the submission of a claim; or

(3) In resolution of a formal claim.

(d)(1) Use of ADR shall be coordinated with counsel. For all matters filed with the Civilian Board of Contract Appeals (CBCA), the CBCA Alternate Dispute Resolution (ADR) procedures contained in 48 CFR 6101.54 shall be followed.

(2) For other matters, pursuant to the Administrative Dispute Resolution Act (ADRA), DOT has appointed a Dispute Resolution Specialist, who is responsible for the operations of the Center for Alternative Dispute Resolution. The Center may provide an internal DOT neutral agreeable to the parties to conduct any of the alternative means of dispute resolution set forth in the ADRA, 5 U.S.C. 571(3), on a non-reimbursable basis for DOT operating administrations and their contracting

partners. Alternative means of dispute resolution include settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration, or any combination of these methods. The Center may also arrange for an external public or private neutral at the parties' expense.

#### **Subchapter F—Special Categories of Contracting**

#### **PART 1234 [RESERVED]**

#### **PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING**

Sec.

1235.003 Policy. 1235.011–70 Contract clause.

1235.012 Patent rights.

1235.070 Research misconduct.

1235.070–1 Contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### **1235.003 Policy.**

(b) *Cost sharing.* DOT cost sharing policies that are not otherwise required by law shall be in accordance with FAR 16.303 and 42.707(a) and Operating Administration (OA) procedures.

(c) *Recoupment.* DOT recoupment not otherwise required by law shall be in accordance with OA procedures.

#### **1235.011–70 Contract clause.**

The contracting officer shall insert the clause at 1252.235–71, Technology Transfer, in all solicitations and contracts for experimental, developmental, or research work.

#### **1235.012 Patent rights.**

Patent rights shall be in accordance with FAR part 27 and any OA implementing procedures in this part.

#### **1235.070 Research misconduct.**

(a) *Applicability.* DOT policy on scientific integrity is implemented in the Deputy Secretary's memorandum dated April 10, 2012, Implementation of Departmental Scientific Integrity Policy at <https://www.transportation.gov/administrations/assistant-secretary-research-and-technology/memorandum-implementation-departmental>. The Department is dedicated to preserving the integrity of the research it conducts and funds and will not tolerate misconduct in the performance of these activities. This policy applies to all DOT-funded or DOT-conducted research, including intramural research, research conducted by contractors, and research performed at research institutions, including universities and industry.

(b) *Definition.* *Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. A finding of research misconduct means a determination based on a preponderance of the evidence that research misconduct has occurred, including a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it was knowingly, intentionally, or recklessly committed.

#### **1235.070–1 Contract clause.**

The contracting officer shall insert the clause at 1252.235–70, Research Misconduct, in all solicitations and contracts for research and development.

#### **PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

#### **Subpart 1236.5—Contract Clauses**

Sec.

1236.570 Special precautions for work at operating airports.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### **Subpart 1236.5—Contract Clauses**

#### **1236.570 Special precautions for work at operating airports.**

Where any acquisition will require work at an operating airport, insert the clause at 1252.236–70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

#### **PART 1237—SERVICE CONTRACTING**

#### **Subpart 1237.1—Service Contracts—General**

Sec.

1237.110–70 Contract clauses.

#### **Subpart 1237.70—Procedures for Acquiring Training Services**

1237.7000 Policy.

1237.7001 Certification of data.

1237.7002 Applicability.

1237.7003 Solicitation provision and contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### **Subpart 1237.1—Service Contracts—General**

#### **1237.110–70 Contract clauses.**

(a) The contracting officer shall insert the clause at 1252.237–70, Qualifications of Contractor Employees, in all solicitations and contracts for services where contractor employees

will have access to Government facilities and sensitive information, including proprietary data and/or resources.

(b) The contracting officer shall insert the clause at 1252.237-73, Key Personnel, in solicitations and contracts for services when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel.

#### **Subpart 1237.70—Procedures for Acquiring Training Services**

##### **1237.7000 Policy.**

When training services are provided under contract, DOT policy requires that all prospective contractors:

(a) Certify that the data provided concerning company qualifications, background statements, and resumes, for example, is current, accurate, and complete; and

(b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

##### **1237.7001 Certification of data.**

Towards fulfilling DOT's policy at 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

##### **1237.7002 Applicability.**

The policy at 1237.7000 applies to all contracts (as defined in FAR 2.101) awarded by DOT for training services when DOT controls the content and/or presentation of the course. This policy does not apply to courses attended by DOT employees that are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation (see 1213.7100 for examples).

##### **1237.7003 Solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 1252.237-71, Certification of Data, in solicitations and the clause at 1252.237-72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) The contracting officer shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be adopted by reference, if the contracting officer determines it contains sufficient descriptive information (*i.e.*, dated

material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

#### **PART 1239—ACQUISITION OF INFORMATION TECHNOLOGY**

Sec.

1239.000 Scope of part.

1239.002 Definitions.

##### **Subpart 1239.1—General**

1239.101 Policy.

1239.101-70 Policy—software management and development.

1239.101-71 Scope.

1239.101-72 Definitions.

1239.101-73 Policy.

1239.106-70 Contract clauses.

##### **Subpart 1239.2—Information and Communication Technology**

1239.201 Scope of subpart.

1239.203 Applicability.

1239.203-70 Information and communication technology accessibility standards—contract clause and provision.

##### **Subpart 1239.70—Information Security and Incident Response Reporting**

1239.7000 Scope of subpart.

1239.7001 Definitions.

1239.7002 Policy.

1239.7003 Contract clauses.

##### **Subpart 1239.71—Protection of Data About Individuals**

1239.7100 Scope of subpart.

1239.7101 Definitions.

1239.7102 Policy.

1239.7103 Responsibilities.

1239.7104 Contract clause.

##### **Subpart 1239.72—Cloud Computing**

1239.7200 Scope of subpart.

1239.7201 Definitions.

1239.7202 Policy.

1239.7203 DOT FedRAMP specific requirements.

1239.7204 Contract clauses.

##### **Subpart 1239.73—Technology Modernization and Upgrades/Refreshment**

1239.7300 Scope of subpart.

1239.7301 Definitions.

1239.7302 Policy.

1239.7303 Contract clauses.

##### **Subpart 1239.74—Records Management**

1239.7400 Scope of subpart.

1239.7401 Definition.

1239.7402 Policy.

1239.7403 Contract clause.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

##### **1239.000 Scope of part.**

In addition to FAR 39.000, this part prescribes acquisition policies and procedures for use in acquiring information technology and information technology-related supplies, services and systems, including information security, to include—

(a) Software management and development;

(b) Section 508 standards and compliance for contracts;

(c) Information security and incident response reporting;

(d) Protection of data about individuals;

(e) Cloud computing;

(f) Technology modernization and upgrade/refreshment; and

(g) Record management.

##### **1239.002 Definitions.**

As used in this part—

*Information* means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

*Media* means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

##### **Subpart 1239.1—General**

##### **1239.101 Policy.**

##### **1239.101-70 Policy—software management and development.**

##### **1239.101-71 Scope.**

This subpart applies to all acquisitions of products or services supporting the development or maintenance of software.

##### **1239.101-72 Definitions.**

As used in this subpart—

*Application* means software that resides above system software and includes applications such as database programs, word processors and spreadsheets. Application software may be bundled with system software or published alone.

*Programming software* means tools to aid developers in writing programs including compilers, linkers, debuggers, interpreters and text editors.

*Software* means a set of instructions or programs instructing a computer to do specific tasks including scripts, applications, programs and a set of instructions. Includes System, Programming, and Application software.

*System software* means a platform comprised of Operating System (OS) programs and services, including settings and preferences, file libraries and functions used for system applications. System software also includes device drivers that run basic computer hardware and peripherals.

**1239.101–73 Policy.**

The contracting officer will ensure all documents involving the acquisition of products or services supporting the development or maintenance of DOT software applications, systems, infrastructure, and services contain the appropriate clauses as may be required by Federal Acquisition Regulation (FAR) and other Federal authorities, in order to ensure that information system modernization is prioritized accordance with Federal law, OMB Guidance, and DOT policy.

**1239.106–70 Contract clauses.**

The contracting officer shall insert the clause at 1252.239–70, Security Requirements for Unclassified Information Technology Resources, and the clause at 1252.239–71, Information Technology Security Plan and Accreditation, in all solicitations and contracts exceeding the micro-purchase threshold that include information technology services.

**Subpart 1239.2—Information and Communication Technology**

**1239.201 Scope of subpart.**

This subpart applies to the acquisition of Information and Communication Technology (ICT) supplies and services. It concerns the access to and use of information and data, by both Federal employees with disabilities, and members of the public with disabilities in accordance with FAR 39.201. This subpart implements DOT policy on section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as it applies to contracts and acquisitions.

**1239.203 Applicability.**

(a) Solicitations for information and communication technology supplies and services may require submission of a section 508 Checklist available at <https://www.section508.gov/sell/vpat>.

**1239.203–70 Information and communication technology accessibility standards—contract clause and provision.**

(a) The contracting officer shall insert the provision at 1252.239–92, Information and Communication Technology Accessibility Notice, in all solicitations.

(b) The contracting officer shall insert the clause at 1252.239–93, Information

and Communication Technology Accessibility, in all contracts and orders.

**Subpart 1239.70—Information Security and Incident Response Reporting**

**1239.7000 Scope of subpart.**

(a) This subpart applies to contracts and subcontracts requiring contractors and subcontractors to safeguard DOT sensitive data that resides in or transits through covered contractor information systems by applying specified network security requirements. It also requires reporting of cyber incidents.

(b) This subpart does not abrogate any other requirements regarding contractor physical, personnel, information, technical, or general administrative security operations governing the protection of unclassified information, nor does it affect requirements of the National Industrial Security Program.

**1239.7001 Definitions.**

As used in this subpart—

*Adequate security* means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

*Contractor attributional/proprietary information* means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

*Contractor information system* means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits DOT sensitive information.

*Cyber incident* means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

*DOT sensitive data* means unclassified information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DOT in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on

behalf of the contractor in support of the performance of the contract.

*Rapidly report* means reporting within two (2) hours of discovery of any cyber incident.

*Technical information* 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. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

**1239.7002 Policy.**

(a) Contractors and subcontractors are required to provide adequate security on all contractor information systems that will collect, use, process, store, or disseminate DOT sensitive data.

(b) Contractors and subcontractors shall report cyber incidents directly to DOT via the DOT Security Operations Center (SOC) 24 hours-a-day, 7 days-a-week, 365 days a year (24x7x365) at phone number: 571–209–3080 (Toll Free: 866–580–1852) within two (2) hours of discovery. Subcontractors will provide to the prime contractor the incident report number automatically assigned by DOT. Lower-tier subcontractors likewise report the incident report number automatically assigned by DOT to their higher-tier subcontractor, until the prime contractor is reached.

(c) If a cyber incident occurs, contractors and subcontractors shall submit to DOT, in accordance with the instructions contained in the clause at 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting—

(1) A cyber incident report;

(2) The malicious software, if detected and isolated; and

(3) The medium or media (or access to covered contractor information systems and equipment) upon request.

(d) Notwithstanding the requirement in this subpart for the reporting of cyber incidents, if existing safeguards have ceased to function or the Government or Contractor discovers new or unanticipated threats or hazards, the discoverer shall immediately bring the situation to the attention of the other party.

(1) Information shared by the contractor may include contractor attributional/proprietary information. The Government will protect against the unauthorized use or release of information that includes contractor attributional/proprietary information.

(2) A cyber incident that is reported by a contractor or subcontractor shall not, by itself, be interpreted as evidence that the contractor or subcontractor has failed to provide adequate security on their covered contractor information systems, or has otherwise failed to meet the requirements of the clause at 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting. When a cyber incident is reported, the contracting officer shall consult with the DOT component Chief Information Officer/cyber security office prior to assessing contractor compliance (see 1239.7003). The contracting officer shall consider such cyber incidents in the context of an overall assessment of a contractor's compliance with the requirements of the clause at 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting.

(3) Support services contractors directly supporting Government activities related to safeguarding DOT sensitive data and cyber incident reporting (e.g., forensic analysis, damage assessment, or other services that require access to data from another contractor) are subject to restrictions on use and disclosure of reported information.

#### **1239.7003 Contract clauses.**

(a) The contracting officer shall insert the clause at 1252.239–72, Compliance with Safeguarding DOT Sensitive Data Controls, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations solely for the acquisition of commercially available off-the-shelf (COTS) items.

(b) The contracting officer shall insert clause at 1252.239–73, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for commercial services that include support for the Government's activities related to safeguarding DOT sensitive data and cyber incident reporting.

(c) The contracting officer shall insert clause at 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, in all solicitations and contracts, including solicitations and

contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of COTS items.

#### **Subpart 1239.71—Protection of Data About Individuals**

##### **1239.7100 Scope of subpart.**

This subpart includes Privacy Act and data protection considerations for DOT contracts. Data protection requirements are in addition to provisions concerning the general protection of individual privacy (see FAR subpart 24.1) and privacy in the acquisition of information technology (see FAR 39.105). DOT rules and regulations implementing the Privacy Act of 1974 are located at 49 CFR part 10.

##### **1239.7101 Definitions.**

As used in this subpart—  
*Breach* means the disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized access, compromise, use, disclosure, modification, destruction, access or loss use of data, or the copying of information to unauthorized media may have occurred.

*Data protection* means the practice of protecting data and managing risks associated with the collection, display, use, processing, storage, transmission, and disposal of information or data as well as the systems and processes used for those purposes. Data protection uses physical, technical, and administrative controls to protect the integrity, availability, authenticity, non-repudiation, and confidentiality of data by incorporating protection, detection, and reaction capabilities. Data protection encompasses not only digital data, but also data in analog or physical form, and applies to data in transit as well as data at rest.

*Information security* means the protection of information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(1) *Integrity*, which means guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity;

(2) *Confidentiality*, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) *Availability*, which means ensuring timely and reliable access to and use of information.

*Personally Identifiable Information* (PII) means the definition as set forth in FAR 24.101.

*Privacy incident* means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or unauthorized access to PII regardless of format.

##### **1239.7102 Policy.**

DOT must ensure that data protection is provided for information and information systems in accordance with current policies, procedures, and statutes, including:

(a) The Clinger-Cohen Act.

(b) The E-Government Act.

(c) Federal Information Systems Modernization Act.

(d) Federal Information Processing Standards.

(e) OMB Circular A–130, Managing Information as a Strategic Resource.

(f) 49 CFR part 10, Maintenance of and Access to Records Pertaining to Individuals.

(g) DOT Order 1351.18, Privacy Risk Management Policy.

(h) DOT Order 1351.19, PII Breach Notification Controls.

(i) DOT Order 1351.28, Records Management.

(j) DOT Order 1351.37, Departmental Cyber Security Policy.

##### **1239.7103 Responsibilities.**

(a) The contracting officer will include appropriate data protection requirements in all contracts and other acquisition-related documents for DOT information created, collected, displayed, used, processed, stored, transmitted, and disposed of by contractors.

(b) The contracting officer will ensure all contracts with contractors maintaining information systems containing PII contain the appropriate clauses as may be required by the Federal Acquisition Regulation (FAR) and other OMB and agency memorandums and directives, to ensure that PII under the control of the contractor is maintained in accordance with Federal law and DOT policy.

(c) The contracting officer and assigned contracting officer's representatives and program and project managers will obtain contractual assurances from third parties working on official DOT business that third parties will protect PII in a manner consistent with the privacy practices of the Department during all phases of the system development lifecycle.

(d) Program and project managers and requiring activities will address the need to protect information about individuals and/or PII in the statement

of work (SOW), performance work statement (PWS) or statement of objectives (SOO). Contracting officers will notify the appropriate organization or office when it intends to issue a solicitation for items or services requiring access to personal information or PII. Contracting officers will identify the Component Privacy Officer as the point of contact for oversight of privacy protection and identify the Component Information Systems Security Manager for the component for oversight of information security to the contractor after award.

(e) See 1252.239–75, DOT Protection of Information about Individuals, PII and Privacy Risk Management Requirements, for additional information regarding the requirements of DOT Order 1351.18, Privacy Risk Management Policy and DOT Order 1351.37, Departmental Cyber Security Policy.

#### **1239.7104 Contract clause.**

The contracting officer shall insert the clause at 1252.239–75, DOT Protection of Information About Individuals, PII and Privacy Risk Management Requirements, in solicitations and contracts involving contractor performance of data protection functions and for contracts involving the design, development, or operation of an information system with access to personally identifiable information as described in DOT Order 1351.18, Privacy Risk Management, and DOT Order 1351.37, Departmental Cyber Security Policy.

### **Subpart 1239.72—Cloud Computing**

#### **1239.7200 Scope of subpart.**

This subpart prescribes policies and procedures for the acquisition of cloud computing services.

#### **1239.7201 Definitions.**

As used in this subpart—

*Authorizing official* means the senior Federal official or executive with the authority to formally assume responsibility for operating an information system at an acceptable level of risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation.

*Cloud computing* means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service

provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

*Government data* means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

*Government-related data* means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (e.g., financial records, legal records, and other similar records) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

#### **1239.7202 Policy.**

(a) *General.* Generally, DOT entities shall acquire cloud computing services using commercial terms and conditions that are consistent with Federal law and the agency's needs, including those requirements specified in this subpart. Some examples of commercial terms and conditions are license agreements, End User License Agreements (EULAs), Terms of Service (TOS), or other similar legal instruments or agreements. Contracting officers shall carefully review commercial terms and conditions and consult counsel to ensure these are consistent with Federal law, regulations, and the agency's needs. Contracting officers shall incorporate any applicable service provider terms and conditions into the contract by attachment or other appropriate mechanism.

(b) *FedRAMP provisional authorization.* Except as provided in paragraph (b)(1) of this section, the contracting officer shall only award a contract to acquire cloud computing services from a cloud service provider (e.g., contractor or subcontractor, regardless of tier) that has been granted provisional authorization by the General Services Administration (GSA) Federal Risk and Authorization Management Program (FedRAMP), and meets the security requirements set out by the DOT Chief Information Officer (CIO), at the level appropriate to the requirement to provide the relevant cloud computing services.

(1) The contracting officer may award a contract to acquire cloud computing services from a cloud service provider that has not been granted provisional authorization when—

(i) The requirement for a provisional authorization is waived by the DOT CIO; or

(ii) The cloud computing service requirement is for a private, on-premises version that will be provided from Government facilities. Under this circumstance, the cloud service provider must obtain a provisional authorization prior to operational use.

(2) When contracting for cloud computing services, the contracting officer shall ensure the following information is provided by the requiring activity:

(i) Government data and Government-related data descriptions.

(ii) Data ownership, licensing, delivery, and disposition instructions specific to the relevant types of Government data and Government-related data (e.g., Contract Data Requirements List; work statement task; line items). Disposition instructions shall provide for the transition of data in commercially available, or open and non-proprietary format (and for permanent records, in accordance with disposition guidance issued by National Archives and Record Administration).

(iii) Appropriate requirements to support applicable inspection, audit, investigation, or other similar authorized activities specific to the relevant types of Government data and Government-related data, or specific to the type of cloud computing services being acquired.

(iv) Appropriate requirements to support and cooperate with applicable system-wide search and access capabilities for inspections, audits, investigations.

(c) *Required storage of data within the United States or outlying areas.* (1) Cloud computing service providers are required to maintain within the 50 States, the District of Columbia, or outlying areas of the United States, all Government data that is not physically located on DOT premises, unless otherwise authorized by the DOT CIO.

(2) The contracting officer shall provide written approval to the contractor when the contractor is permitted to maintain Government data at a location outside the 50 States, the District of Columbia, and outlying areas of the United States.

#### **1239.7203 DOT FedRAMP specific requirements.**

DOT entities shall set forth DOT FedRAMP specific cloud service

requirements. DOT cloud service providers shall adhere to specific requirements when providing services to DOT and its operating administrations whenever DOT or other Federal agency information, sensitive information as defined by DOT policy, personally identifiable information, or third-party provided information and data will transit through or reside on the cloud services system and infrastructure and that requires protection according to required National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS). In addition to the requirements found elsewhere in the FAR, the following are required—

(a) *Validated cryptography for secure communications.* The FedRAMP security control baseline requires cryptographic mechanisms to prevent unauthorized disclosure of information during transmission unless otherwise protected by alternative physical measures (see NIST FIPS 140–2). DOT entities must require FIPS 140–2 validated cryptography be used between DOT and the cloud service provider. The program/project manager or requiring activity shall specify which level (1–4) of FIPS 140–2 validation is required. See the clause prescribed at 1239.7204(c).

(b) *Digital signature cryptography—(authentication, data integrity, and non-repudiation).* Cloud service providers are required to implement FIPS 140–2 validated cryptography for digital signatures. If DOT entities require integration with specific digital signature technologies, contracting officers shall specify what level (1–4) of FIPS 140–2 encryption is required. See the clause prescribed at 1239.7204(d).

(c) *Audit record retention for cloud service providers.* DOT entities should consider the length of time Cloud Service Providers (CSP) must retain audit records. DOT implements the FedRAMP requirement for a service provider to retain system audit records on-line for at least ninety calendar days and to further preserve audit records off-line for a period that is in accordance with DOT and NARA requirements. See the clause prescribed at 1239.7204(e).

(d) *Cloud identification and authentication (organizational users) multi-factor authentication.* Cloud Service Providers pursuing a FedRAMP authorization must provide a mechanism for DOT activities and operating administrations (*i.e.*, Government consuming end-users) to use multi-factor authentication. DOT follows National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS)

Publication (PUB) Number 201–2, Personal Identity Verification (PIV) of Federal Employees and Contractors. See the clause prescribed at 1239.7204(f).

(e) *Identification and authentication (non-organizational users).* Contracting officers shall require that Cloud Service Providers pursuing a FedRAMP authorization provide multi-factor authentication for the provider's administrators. See the clause prescribed at 1239.7204(g).

(f) *Incident reporting timeframes.* Contracting officers shall specify in solicitations and contracts the required FedRAMP parameters for Incident Reporting at the levels stipulated in NIST SP 800–61, as well as the requirement for an Incident Reporting Plan that complies with those requirements. The program office shall include specific incident reporting requirements including who and how to notify the agency. See 1239.7002(b) and the clause prescribed at 1239.7204(h).

(g) *Media transport.* DOT or other Federal agency information and data require protection. Contracting officers shall set forth specific DOT media transport requirements. See the clause prescribed at 1239.7204(i).

(h) *Personnel screening—background investigations.* When DOT leverages FedRAMP Provisional Authorizations, DOT conducts the required background investigations, but may accept reciprocity from other agencies that have implemented the Cloud Service Provider's systems. DOT's screening procedures, process, and additional screening requirements are set forth at 1252.204–70 and the clause prescribed at 1239.7204(j).

(i) *Minimum personnel security requirements—U.S. citizenship and clearance.* Contractors shall provide support personnel who are U.S. persons maintaining a NACI clearance or greater in accordance with OMB memoranda and contract clauses, and who shall undergo required DOT background investigations prior to providing services and performing on the contract. See clause 1252.204–70(b) and the clause prescribed at 1239.7204(j).

Reinvestigations are required for cloud services provider personnel as follows—

(1) Moderate risk law enforcement and high impact public trust level—a reinvestigation is required during the 5th year; and

(2) There is no reinvestigation for other moderate risk positions or any low risk positions.

#### **1239.7204 Contract clauses.**

(a) The contracting officer shall insert the clause at 1252.239–76, Cloud Computing Services, in solicitations and

contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(b) The contracting officer shall insert a clause substantially as follows at 1252.239–77, Data Jurisdiction, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(c) The contracting officer shall insert a clause substantially as follows at 1252.239–78, Validated Cryptography for Secure Communications, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(d) The contracting officer shall insert a clause substantially as follows at 1252.239–79, Authentication, Data Integrity, and Non-Repudiation, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(e) The contracting officer shall insert a clause substantially as follows at 1252.239–80, Audit Record Retention for Cloud Service Providers, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(f) The contracting officer shall insert a clause substantially as follows at 1252.239–81, Cloud Identification and Authentication (Organizational Users) Multi-Factor Authentication, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(g) The contracting officer shall insert a clause substantially as follows at 1252.239–82, Identification and Authentication (Non-Organizational Users), in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(h) The contracting officer shall insert a clause substantially as follows at

1252.239–83, Incident Reporting Timeframes, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(i) The contracting officer shall insert a clause substantially as follows at 1252.239–84, Media Transport, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(j) The contracting officer shall insert a clause substantially as follows at 1252.239–85, Personnel Screening—Background Investigations, in all services solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(k) The contracting officer shall insert a clause substantially as follows at 1252.239–86, Boundary Protection—Trusted Internet Connections, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(l) The contracting officer shall insert a clause substantially as follows at 1252.239–87, Protection of Information at Rest, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

(m) The contracting officer shall insert a clause substantially as follows at 1252.239–88, Security Alerts, Advisories, and Directives, in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for information technology services involving cloud computing services.

### **Subpart 1239.73—Technology Modernization and Upgrades/Refreshment**

#### **1239.7300 Scope of subpart.**

This subpart prescribes policies and procedures for incorporating technology modernization, upgrades, and refreshment into acquisitions involving information technology products or

services supporting the development of applications, information systems, or system software.

#### **1239.7301 Definitions.**

As used in this subpart—

*Application* means the software that resides above system software and includes applications such as database programs, word processors and spreadsheets. Application software may be bundled with system software or published alone.

*Modernization* means the conversion, rewriting or porting of a legacy system to a modern computer programming language, software libraries, protocols, or hardware platform.

*Refresh* means the periodic replacement of equipment to ensure continuing reliability of equipment and/or improved speed and capacity.

*System software* means a platform composed of operating system programs and services, including settings and preferences, file libraries and functions used for system applications. System software also includes device drivers that run basic computer hardware and peripherals.

*Upgrade* means an updated version of existing hardware, software or firmware. The purpose of an upgrade is improved and updated product features, including performance, product life, usefulness and convenience.

#### **1239.7302 Policy.**

Contracting officers will ensure all documents involving the acquisition of development or maintenance of DOT applications, systems, infrastructure, and services contain the appropriate clauses as may be required by the Federal Acquisition Regulation (FAR) and other Federal authorities, in order to ensure that information system modernization is prioritized accordance with Federal law, OMB Guidance, and DOT policy.

#### **1239.7303 Contract clauses.**

(a) The contracting officer shall insert the clause at 1252.239–89, Technology Modernization, in solicitations and contracts when the contractor or a subcontractor, at any tier, proposes a modernization approach to develop or maintain information systems, applications, infrastructure, or services.

(b) The contracting officer shall insert the clause at 1252.239–90, Technology Upgrades/Refreshment, in solicitations and contracts when the contractor or a subcontractor at any tier, proposes technology improvements (upgrades/refreshments) to develop or maintain information systems, applications, infrastructure, or services.

### **Subpart 1239.74—Records Management**

#### **1239.7400 Scope of subpart.**

This subpart prescribes policies for records management requirements for contractors who create, work with, or otherwise handle Federal records, regardless of the medium in which the records exist.

#### **1239.7401 Definition.**

As used in this subpart—

*Federal record*, as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. The term Federal record:

- (1) Includes all DOT records.
- (2) Does not include personal materials.
- (3) Applies to records created, received, or maintained by contractors pursuant to a DOT contract.
- (4) May include deliverables and documentation associated with deliverables.

#### **1239.7402 Policy.**

(a) *Requirements*—(1) *Compliance*. Contractors shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to 44 U.S.C. chapters 21, 29, 31, and 33, NARA regulations at 36 CFR chapter XII, subchapter B, and those policies associated with the safeguarding of records covered by Privacy Act of 1974 (5 U.S.C. 552a). These policies include the preservation of all records, regardless of form or characteristics, mode of transmission, or state of completion.

(2) *Applicability*. In accordance with 36 CFR 1222.32, all data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and must be managed and scheduled for disposition only as permitted by relevant records management laws and regulations and DOT Order 1351.28,

Departmental Records Management Policy.

(3) *Records maintenance.* While DOT records are in a contractor's custody, the contractor is responsible for preventing the alienation or unauthorized destruction of the DOT records, including all forms of mutilation. Records may not be removed from the legal custody of DOT or destroyed except in accordance with the provisions of the agency records schedules and with the written concurrence of the DOT or Component Records Officer, as appropriate. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, the contractor must report the event to the contracting officer, in accordance with 36 CFR part 1230, for reporting to NARA.

(4) *Unauthorized disclosure.* Contractors shall notify the contracting officer within two hours of discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records or equipment. Contractors shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of the information, data, documentary material, records and/or equipment accessed, maintained, or created. Contractors shall not remove material from Government facilities or systems, or facilities or systems operated or maintained on the Government's behalf, without the express written permission of the contracting officer or contracting officer's representative. When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to DOT control or the contractor must hold it until otherwise directed. Items returned to the Government shall be hand carried, mailed, emailed, or securely electronically transmitted to the contracting officer or address prescribed in the contract. Destruction of records is expressly prohibited unless authorized.

(b) *Non-public information.* Contractors shall not create or maintain any records containing any non-public DOT information that are not specifically tied to or authorized by the contract.

#### **1239.7403 Contract clause.**

The contracting officer shall insert the clause at 1239.239–91, Records Management, in all solicitations and

contracts involving services where contractors or subcontractors and their employees or associates collect, access, maintain, use, disseminate, or otherwise handle Federal records.

### **PART 1241 [RESERVED]**

#### **Subchapter G—Contract Management**

### **PART 1242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

#### **Subpart 1242.1—Contract Audit Services**

Sec.

1242.101 Contract audit responsibilities.

1242.102 Assignment of contract audit services.

1242.170 Contract clause.

#### **Subpart 1242.2—Contract Administration Services**

1242.270 Contract clauses.

#### **Subpart 1242.3—Contract Administration Office Functions**

1242.302 Contract administration functions.

#### **Subpart 1242.15—Contractor Performance Information**

1242.1503 Procedures.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### **Subpart 1242.1—Contract Audit Services**

##### **1242.101 Contract audit responsibilities.**

(b) It is DOT policy that private certified public accounting (CPA) firms may be used to provide audit services as described in FAR 42.101 to DOT contracting officers when procurement schedule demands cannot be met by the Defense Contract Audit Agency (DCAA) or the agency with audit cognizance.

##### **1242.102 Assignment of contract audit services.**

(b) In accordance with 1242.101, when the responsible audit agency declines a request for services, DOT contracting officers may utilize audit services from commercial CPA firms as authorized in 1242.101.

##### **1242.170 Contract clause.**

The contracting officer shall insert the clause at 1252.242–74, Contract Audit Support, in solicitation and contracts when other than firm-fixed-price contracts are contemplated.

#### **Subpart 1242.2—Contract Administration Services**

##### **1242.270 Contract clauses.**

(a) The contracting officer may use the clause at 1252.242–70, Dissemination of Information—Educational Institutions, in lieu of the clause at 1252.242–72,

Dissemination of Contract Information, in DOT research contracts with educational institutions, except contracts that require the release or coordination of information.

(b) The contracting officer shall insert the clause at 1252.242–71, Contractor Testimony, in all solicitations and contracts issued by NHTSA. Other OAs may use the clause as deemed appropriate.

(c) The contracting officer may insert the clause at 1252.242–72, Dissemination of Contract Information, in all DOT contracts except contracts that require the release or coordination of information.

#### **Subpart 1242.3—Contract Administration Office Functions**

##### **1242.302 Contract administration functions.**

(a) If a cognizant Federal agency has not performed the functions identified in FAR 42.302(a)(5), (9), (11), and (12), then DOT contracting officers are authorized to perform these functions with the assistance of the cognizant government auditing agency, if assigned and available to provide support in a timely manner. If the cognizant government auditing agency is not assigned and/or available in the necessary timeframe, DOT contracting officers may use the audit services of a CPA firm.

(13) The assignment of contract administration to a Defense Contract Management Agency (DCMA) office by the contracting officer does not affect the designation of the paying office unless a transfer of DOT funds to the agency of the Contract Administration Office (CAO) is effected, and the funds are converted to the CAO agency's account for payment purposes. When the contracting officer proposes to delegate the contract payment function to another agency (e.g., DCMA), the contracting officer shall discuss the transfer of funds procedures with the cognizant OA payment office. The CAO, the contracting officer, or the designated contract specialist in the contracting office shall review and approve the invoices and vouchers under the assigned contracts. The review and approval of invoices under cost-reimbursement and time-and-materials type contracts cannot be delegated to the Contracting Officer's Representative.

#### **Subpart 1242.15—Contractor Performance Information**

##### **1242.1503 Procedures.**

(a)(1) Each OA is responsible for assigning responsibility and management accountability for the

completeness of past performance submissions as required in FAR 42.1503(a).

## PART 1245 [RESERVED]

## PART 1246—QUALITY ASSURANCE

### Subpart 1246.1—General

Sec.

1246.101 Definitions.

1246.101–70 Additional definitions.

### Subpart 1246.7—Warranties

1246.705–70 Limitations—restrictions.

1246.706–70 Warranty terms and conditions—requirements.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1246.1—General

#### 1246.101 Definitions.

#### 1246.101–70 Additional definitions.

As used in this subpart—

*At no additional cost to the Government* means at no increase in price for firm-fixed-price contracts, at no increase in target or ceiling price for fixed price incentive contracts (*see* FAR 46.707), or at no increase in estimated cost or fee for cost-reimbursement contracts.

*Defect* means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

*Major acquisition* means an acquisition or for supplies or services that requires submission of an OMB Exhibit 300 (Capital Asset Plan/Business Case) in accordance with OMB Circular A–11, Preparation, Submission and Execution of the Budget, and for information technology or information technology related acquisitions, compliance with the Department Chief Information Officer (CIO) Policy (CIOP). A major acquisition typically has one or more of the following characteristics—

- (1) Life-cycle costs of \$150 million or more;
- (2) Is a financial system, e-gov system, or e-business system with a life-cycle cost of \$500,000 or more; or
- (3) An acquisition that does not meet the dollar thresholds of paragraph (1) or (2) of this definition but—
  - (i) Is mission-critical;
  - (ii) Requires special management attention because of its importance to an OA mission;
  - (iii) Plays a significant role in the administration of OA programs, processes or other resources; or
  - (iv) Directly supports the President's Management Agenda.

*Performance requirements* means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

### Subpart 1246.7—Warranties

#### 1246.705–70 Limitations—restrictions.

The following restrictions are applicable to DOT contracts:

(a) The contractor shall not be required to honor the warranty on any property furnished by the Government except for—

- (1) Defects in installation; and
- (2) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

(b) Any warranty obtained shall specifically exclude coverage of damage in time of war (combat damage) or national emergency.

(c) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

#### 1246.706–70 Warranty terms and conditions—requirements.

(a) When appropriate and cost effective, the contracting officer shall comply with the following requirements when developing the warranty terms and conditions—

- (1) Identify the affected line item(s) and the applicable specification(s);
- (2) Require that the line item's design and manufacture will conform to—
  - (i) An identified revision of a top-level drawing; and/or
  - (ii) An identified specification or revision thereof;
- (3) Require that the line item conform to the specified Government performance requirements;
- (4) Require that all line items and components delivered under the contract will be free from defects in materials and workmanship;
- (5) State that if the contractor fails to comply with specification or there are defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;
- (6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;
- (7) Identify the specific paragraphs containing Government performance requirements that the contractor must meet;
- (8) Ensure that any performance requirements identified as goals or

objectives beyond specification requirements are excluded from the warranty provision;

(9) Specify what constitutes the start of the warranty period (*e.g.*, delivery, acceptance, in-service date) and the end of the warranty period (*e.g.*, passing a test or demonstration, or operation without failure for a specified period), and specify circumstances requiring an extension of warranty duration (*e.g.*, extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in relation to the warranty coverage;

(11) In addition to combat damage, identify any conditions which will not be covered by the warranty; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) In addition to the terms and conditions listed in paragraph (a) of this section, the contracting officer shall consider the following when a warranty clause is being used for a major system, as defined in FAR 2.101:

(1) For line items or components that are commercially available, obtaining a warranty as is normally provided by the manufacturer or supplier, in accordance with FAR 46.703(d) and 46.710(b)(2).

(2) Obtaining a warranty of compliance with the stated requirements for line items or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract.

(3) A warranty provided under paragraph (b)(2) of this section shall provide that in the event the line items or any components thereof fails to meet the terms of the warranty provided, the contracting officer may—

(i) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(ii) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(iii) Equitably reduce the contract price.

(4) Inserting remedies, exclusions, limitations and durations, provided these are consistent with the specific

requirements of this subpart and FAR 46.706.

(5) Excluding from the terms of the warranty certain defects for specified supplies (exclusions) and limiting the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty considering the technical risk, contractor financial risk, or other program uncertainties.

(6) Structuring of a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(c) Any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, if the contractor is reimbursed at established rates for fault isolation work, and that the Government receive credit for any payments where equipment failure is covered by warranty provisions.

## PART 1247—TRANSPORTATION

### Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

Sec.  
1247.506 Procedures.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

#### 1247.506 Procedures.

(a) The Maritime Administration (MARAD) is the enforcing agency of the cargo preference statutes. MARAD can assist contractors in locating U.S.-flag carriers and determine when such services are not available. MARAD can also assist contracting officers in evaluating costs, services, and other matters regarding ocean transportation.

(d) If no transportation officer is available, the contracting officer shall submit a copy of the rated "on board" bill of lading, for each shipment, no later than 20 days after the vessel's loading date for exports and 30 days for imports as stated in 46 CFR 381.3. All non-vessel ocean common carrier bills of lading should be accompanied by the underlying carrier's ocean bill of lading. The documents shall be sent to the

Maritime Administration, Office of Cargo and Commercial Sealift, MAR-620, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. The bill of lading shall contain the following information—

- (1) Name of sponsoring Government agency or department;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Commodity description;
- (8) Gross weight in kilos; and
- (9) Total ocean freight revenue in U.S. dollars.

## Subchapter H—Clauses and Forms

### PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 1252.1—Instructions for Using Provisions and Clauses

Sec.  
1252.101-70 Using this part.

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### Subpart 1252.3—Provisions and Clauses Matrix

1252.301 Solicitation provisions and contract clauses (matrix).

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### Subpart 1252.1—Instructions for Using Provisions and Clauses

#### 1252.101–70 Using this part.

TAR provisions or clauses that supplement the FAR shall follow the following numbering conventions in accordance with FAR 52.101(b)(2)(i):

(a) Agency-prescribed provisions and clauses permitted by TAR and used on a standard basis (*i.e.*, normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the TAR. Operating Administrations (OAs) desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the Office of the Senior Procurement Executive in accordance with 1201.304 for possible inclusion in the TAR (*see* FAR 52.101(b)(2)(i)(A)).

(b) Provisions and clauses used on a one-time basis (*i.e.*, non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the OA (*see* FAR 52.101(b)(2)(i)(C)). This authority is permitted subject to—

- (1) Evidence of legal counsel review in the contract file;
- (2) Inserting these clauses in the appropriate sections of the uniform contract format; and
- (3) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and TAR.

### Subpart 1252.2—Text of Provisions and Clauses

#### 1252.201–70 Contracting Officer's Representative.

As prescribed in 1201.604–70, insert the following clause:

##### Contracting Officer's Representative (NOV 2022)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Representative (COR) to perform functions under the contract such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice

to proceed. The designation letter will set forth the authorities and limitations of the COR under the contract.

(b) The Contracting Officer cannot authorize the COR or any other representative to sign documents (*i.e.*, contracts, contract modifications, etc.) that require the signature of the Contracting Officer.

(End of clause)

#### 1252.204–70 Contractor Personnel Security and Agency Access.

As prescribed in 1204.1303, insert the following clause:

##### Contractor Personnel Security and Agency Access (NOV 2022)

(a) *Definitions.* As used in this clause—  
*Agency access* means access to DOT facilities, sensitive information, information systems or other DOT resources.

*Applicant* means a contractor employee for whom the Contractor applies for a DOT identification card.

*Contractor employee* means a prime contractor and subcontractor employee who requires agency access to perform work under a DOT contract.

*Identification card (or "ID card")* means a government issued or accepted identification card such as a Personal Identity Verification (PIV) card, a PIV-Interoperable (PIV-I) card from an authorized PIV-1 issuer, or a non-PIV card issued by DOT, or a non-PIV card issued by another Federal agency and approved by DOT. PIV and PIV-1 cards have physical and electronic attributes that other (non-PIV) ID cards do not have.

*Issuing office* means the DOT entity that issues identification cards to contractor employees.

*Local security servicing organization* means the DOT entity that provides security services to the DOT organization sponsoring the contract.

(b) *Risk and sensitivity level designations.* For contracts requiring access to DOT facilities, sensitive information, information systems or other DOT resources, contractor employees will be required to complete background investigations, identity proofing, and government identification card application procedures to determine suitability for access. DOT will assign a risk and sensitivity level designation to the overall contract and/or to contractor employee positions by category, group or individual. The risk and sensitivity level designations will be the basis for determining the level of personnel security processing required for contractor employees. The following risk and sensitivity level designations and associated level of processing are required, and each level includes the prior levels—

- (1) Low risk level: National Agency Check with Written Inquiries (NACI);
- (2) Moderate risk level: Minimum Background Investigation (MBI); and
- (3) High risk level: Background Investigation.

(c) *Security clearances.* Contractor employees may also be required to obtain security clearances (*i.e.*, Confidential, Secret,

or Top Secret). National Security work designated "special sensitive," "critical sensitive," or "non-critical sensitive," will determine the level of clearance required for contractor employees. Personnel security clearances for national security contracts in DOT will be processed according to the Department of Defense National Industrial Security Program Operating Manual (NISPOM).

(d) *Pre-screening of contractor employees.* The Contractor must pre-screen individuals designated for employment under any DOT contract by verifying minimal suitability requirements to ensure that only candidates that appear to meet such requirements are considered for contract employment, and to mitigate the burden on the Government of conducting background investigations on objectionable applicants. The Contractor must exercise due diligence in pre-screening all employees prior to submission to DOT for agency access. DOT may decline to grant agency access to a contractor employee for reasons including, but not limited to—

(1) Conviction of a felony, a crime of violence, or a misdemeanor involving moral turpitude;

(2) Falsification of information entered on forms or of other documents submitted;

(3) Improper conduct including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct adverse to the Government regardless of whether the conduct is directly related to the contract; and

(4) Any behavior judged to pose a potential threat to DOT facilities, sensitive information, information systems or other resources.

(e) *Citizenship status.* The Contractor must monitor a non-citizen's continued authorization for employment in the United States. The Contractor must provide documentation to the Contracting Officer or the Contracting Officer's Representative (COR) during the background investigation process that validates that the E-Verify requirement has been met for each contractor employee.

(f) *Background investigation and adjudication.* A contractor employee must have a favorable adjudication of background investigation before DOT will issue an ID card to the contractor employee granting access to DOT facilities, sensitive information, information systems or other DOT resources. DOT may accept favorable adjudications of background investigations from other Federal agencies when applicants have held PIV cards issued by those agencies with no break in service. DOT may also accept PIV-I (Interoperable) cards issued by an authorized PIV-1 issuer as evidence of identity. A favorable adjudication does not preclude DOT from initiating a new investigation when deemed necessary. At a minimum, the FBI National Criminal History Check (fingerprint check) must be favorably completed before a DOT identification card can be issued. Each Contractor must use the Office of Personnel Management's (OPM) e-QIP system to complete any required investigative forms. Instructions for obtaining fingerprints will be provided by the COR or Contracting Officer. The DOT Office of

Security, M-40, or a DOT organization delegated authority by M-40, is responsible for adjudicating the suitability of contractor employees.

(g) *Agency access denied.* Upon contract award, DOT will initiate the agency access procedure for all contractor employees requiring access to DOT facilities, sensitive information, information systems and other DOT resources for contract performance. DOT may deny agency access to any individual about whom an adverse suitability determination is made. Failure to submit the required security information or to truthfully answer all questions shall constitute grounds for denial of access. The Contractor must not provide agency access to contractor employees until the COR or Contracting Officer provides notice of approval, which is authorized only by the DOT Office of Security (M-40) or a DOT organization delegated authority by M-40. Where a proposed contractor employee is denied agency access by the Government or, if for any reason a proposed application is withdrawn by the Contractor during the agency access process, the additional costs and administrative burden for conducting additional background investigations caused by a lack of effective prescreening or planning on the part of the Contractor may be considered as part of the Contractor's overall performance evaluation.

(h) *Identification card application process.* The COR will be the DOT ID card Sponsor and point of contact for the Contractor's application for a DOT ID card. The COR shall review and approve the DOT ID card application before an ID card is issued to the applicant. An applicant may be issued either a Personal Identity Verification (PIV) card that meets the standards of Homeland Presidential Security Directive (HSPD-12), or an applicant may be issued a non-PIV card. Generally, a non-PIV card will be issued for contracts that expire in six months or less, including option periods. The COR may request the issuing office to waive the six-month eligibility requirement when it is in DOT's interest for contract performance. The following applies—

(1) PIV card. The applicant must complete a DOT on-line application for a PIV card;

(2) Non-PIV card. The applicant must complete and submit a hard copy of Form 1681 to the COR/Sponsor; and

(3) Regardless of the type of card to be issued (PIV or non-PIV), the applicant must appear in person to provide two forms of identity source documents in original form to DOT. The identity source documents must come from the list of acceptable documents included in Form F-9, OMB No. 1115-0136, Employment Eligibility Verification. At least one document must be a valid State or Federal government-issued picture identification. For a PIV card, the applicant may be required to appear in-person a second time for enrollment and activation.

(i) *Identification card custody and control.* The Contractor is responsible for the custody and control of all forms of government identification issued by DOT to contractor employees for access to DOT facilities, sensitive information, information systems and other DOT resources. The Contractor shall:

(1) Provide a listing of personnel for whom an identification (ID) card is requested to the COR or PM who will provide a copy of the listing to the card issuing office. This may include Contractor and subcontractor personnel. Follow issuing office directions for submittal of an application package(s).

(2) While visiting or performing work on a DOT facility, as specified by the issuing office, PM or COR, ensure that contractor employees prominently display their ID card.

(3) Immediately notify the COR or, if the COR is unavailable, the Contracting Officer when a contractor employee's status changes and no longer requires agency access (e.g., employee's transfer, completion of a project, retirement, removal from work on the contract, or termination of employment) that may affect the employee's eligibility for access to the facility, sensitive information, or resources.

(4) Promptly deliver to the issuing office: (a) all ID cards assigned to an employee who no longer requires access to the facility; and (b) all expired ID cards within five (5) days of their expiration or all cards at time of contract termination, whichever occurs first.

(5) Immediately report any lost or stolen ID cards to the issuing office and follow its instructions.

(i) The Contractor is responsible for maintaining and safeguarding the DOT ID card upon issuance to the contractor employee. The Contractor must ensure that contractor employees comply with DOT requirements concerning the renewal, loss, theft, or damage of an ID card. The Contractor must immediately notify the COR or, if the COR is unavailable, the Contracting Officer when an ID card is lost, stolen or damaged.

(ii) Failure to comply with the requirements for custody and control of DOT ID cards may result in withholding final payment or contract termination based on the potential for serious harm caused by inappropriate access to DOT facilities, sensitive information, information systems or other DOT resources.

(iii) Specific actions and activities are required in certain events—

(A) *Renewal.* A contractor employee's DOT issued ID card is valid for a maximum of three years or until the contract expiration date (including option periods), whichever occurs first. The renewal process should begin six weeks before the PIV card expiration date. If a PIV card is not renewed before it expires, the contractor employee will be required to sign-in daily for facility access and may have limited access to information systems and other resources.

(B) *Lost/stolen.* Immediately upon detection, the Contractor or contractor employee must report a lost or stolen DOT ID card to the COR, or if the COR is unavailable, the Contracting Officer, the issuing office, or the local servicing security organization. The Contractor must submit an incident report within 48 hours, through the COR or, if the COR is unavailable, the Contracting Officer, the issuing office, or the local security servicing organization describing the circumstances of the loss or theft. The Contractor must also report a lost or stolen PIV card through the DOT on-line registration system. If the loss or theft is

reported by the Contractor to the local police, a copy of the police report must be provided to the COR or Contracting Officer. From the date of notification to DOT, the Contractor must wait three days before getting a replacement ID card. During the 3-day wait period, the contractor employee must sign in daily for facility access.

(C) *Replacement.* An ID card will be replaced if it is damaged, contains incorrect data, or is lost or stolen for more than 3 days, provided there is a continuing need for agency access to perform work under the contract.

(D) *Surrender of ID cards.* Upon notification that routine access to DOT facilities, sensitive information, information systems or other DOT resources is no longer required, the Contractor must surrender the DOT issued ID card to the COR, or if the COR is unavailable, the Contracting Officer, the issuing office, or the local security servicing organization in accordance with agency procedures.

(j) *Flow down of clause.* The Contractor is required to include this clause in any subcontracts at any tier that require the subcontractor or subcontractor's employees to have access to DOT facilities, sensitive information, information systems or other resources.

(End of clause)

#### **1252.209-70 Organizational and Consultant Conflicts of Interest.**

As prescribed in 1209.507-270(a), the contracting officer shall insert a clause substantially as follows in solicitations and contracts:

#### **Organizational and Consultant Conflicts of Interest (NOV 2022)**

(a) An offeror shall identify in its proposal, quote, bid or any resulting contract, any potential or actual Organizational and Consultant Conflicts of Interest (OCCI) as described in FAR subpart 9.5. This includes actual or potential conflicts of interests of proposed subcontractors. If an offeror identifies in its proposal, quote, bid or any resulting contract, a potential or actual conflict of interests the offeror shall submit an Organizational and Consultant Conflicts of Interest Plan (OCCIP) to the contracting officer. The OCCIP shall describe how the offeror addresses potential or actual conflicts of interest and identify how they will avoid, neutralize, or mitigate present or future conflicts of interest.

(b) Offerors must consider whether their involvement and participation raises any OCCI issues, especially in the following areas when:

(1) Providing systems engineering and technical direction.

(2) Preparing specifications or work statements and/or objectives.

(3) Providing evaluation services.

(4) Obtaining access to proprietary information.

(c) If a prime contractor or subcontractor breaches any of the OCCI restrictions, or does not disclose or misrepresents any relevant facts concerning its conflict of interest, the government may take appropriate action,

including terminating the contract, in addition to any remedies that may be otherwise permitted by the contract or operation of law.

(End of clause)

**1252.209–71 Limitation of Future Contracting.**

As prescribed in 1209.507–270(b), the contracting officer shall insert a clause substantially as follows in solicitations and contracts:

**Limitation of Future Contracting (NOV 2022)**

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, prospective offerors are encouraged to review FAR subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is *[describe the conflict]*.

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing government contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial ensuing contract).

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and if these data remain proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use the data to compete with those other companies.

(End of clause)

**1252.211–70 Index for Specifications.**

As prescribed in 1211.204–70, insert the following clause:

**Index for Specifications (NOV 2022)**

If an index or table of contents is furnished in connection with specifications, such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not a part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

**1252.216–70 Evaluation of Offers Subject to an Economic Price Adjustment Clause.**

As prescribed in 1216.203–470, insert the following provision:

**Evaluation of Offers Subject to an Economic Price Adjustment Clause (NOV 2022)**

Offers shall be evaluated without an amount for an economic price adjustment

being added. Offers will be rejected that—(1) increase the ceiling stipulated; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

**1252.216–71 Determination of Award Fee.**

As prescribed in 1216.406–70(a), insert the following clause:

**Determination of Award Fee (NOV 2022)**

(a) The Government shall evaluate Contractor performance at the end of each specified evaluation period to determine the amount of award. The contractor agrees that the amount of award and the award fee determination methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to the Award Fee Plan. The Contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The Contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within *[insert number]* days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(d) The amount of award fee that can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts]*. Award fee that is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(End of clause)

**1252.216–72 Award Fee Plan.**

As prescribed in 1216.406–70(b), insert the following clause:

**Award Fee Plan (NOV 2022)**

(a) An Award Fee Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee, if any, available for each area. A copy of the plan shall be provided to the Contractor *[insert number]* calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Award Fee Plan may relate to: (1) Technical (including schedule) requirements, if appropriate; (2) Management; and (3) Cost.

(c) The Award Fee Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor *[insert number]* calendar

days prior to the start of the evaluation period to which the change will apply.

(End of clause)

**1252.216–73 Distribution of Award Fee.**

As prescribed in 1216.406–70(c), insert the following clause:

**Distribution of Award Fee (NOV 2022)**

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts—

Evaluation Period:  
Available Award Fee:  
*[Contracting Officer insert appropriate information]*

(b) After the Contractor has been paid 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or \$150,000, whichever is less. Thereafter, base fee and award fee payments may continue.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the Contractor to the Contracting Officer's Representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

**1252.216–74 Settlement of Letter Contract.**

As prescribed in 1216.603–4, insert the following clause:

**Settlement of Letter Contract (NOV 2022)**

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract *[insert number]* dated *[insert effective date]*. It supersedes the letter contract and its modification number(s) *[insert number(s)]* and, to the extent of any inconsistencies, governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract *[insert number]* and modification number(s) *[insert number(s)]*. Payment of the agreed upon fee or profit withheld pending definitization of the letter contract, may commence immediately at the rate and times stated within this contract.

(End of clause)

**1252.217–70 Guarantee.**

As prescribed at 1217.7001(a), insert the following clause:

**Guarantee (NOV 2022)**

(a) In the event any work performed or materials furnished by the Contractor prove defective or deficient within 60 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 in accordance with the contract terms and conditions.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60-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 contract.

(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 contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

**1252.217-71 Delivery and Shifting of Vessel.**

As prescribed at 1217.7001(b), insert the following clause:

**Delivery and Shifting of Vessel (NOV 2022)**

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

**1252.217-72 Performance.**

As prescribed at 1217.7001(b), insert the following clause:

**Performance (NOV 2022)**

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge—

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant 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 clause 52.245-1, Government Property;

(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 contract will state whether dock and sea trials are required to determine whether 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 contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract 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)

**1252.217-73 Inspection and Manner of Doing Work.**

As prescribed at 1217.7001(b), insert the following clause:

**Inspection and Manner of Doing Work (NOV 2022)**

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to 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 offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, 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 contract, in addition to its rights under the Guarantee clause, 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 contract, 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 contract 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 contract.

(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 the contract, 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 a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with clause 52.245-1, Government Property; and

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

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The Contractor additionally must advise the COR of the status of all valve closures and openings for which the Contractor's workers were responsible.

(f) Except as otherwise provided in the contract, 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 Fahrenheit, 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 stem 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 contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract 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, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this contract.

(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 contract 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)

#### 1252.217-74 Subcontracts.

As prescribed at 1217.7001(b), insert the following clause:

#### Subcontracts (NOV 2022)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or any differences between subcontractors.

(End of clause)

#### 1252.217-75 Lay Days.

As prescribed at 1217.7001(c), insert the following clause:

#### Lay Days (NOV 2022)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct and indirect, to reimburse the Contractor for use of dry dock or marine railway.

(End of clause)

#### 1252.217-76 Liability and Insurance.

As prescribed at 1217.7001(b), insert the following clause:

#### Liability and Insurance (NOV 2022)

(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 subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, regardless of whether the defect is latent or whether 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 codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first \$5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision 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 contract and by law. The indemnity applies 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 contract 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 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 payments, 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 of 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 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 this contract.

(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) Decide that the loss or damage shall not be replaced or repaired and in that event, 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 contract.

(End of clause)

#### **1252.217-77 Title.**

As prescribed at 1217.7001(b), insert the following clause:

#### **Title (NOV 2022)**

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

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, 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)

#### **1252.217-78 Discharge of Liens.**

As prescribed at 1217.7001(b), insert the following clause:

#### **Discharge of Liens (NOV 2022)**

(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 materials furnished under this contract.

(b) If any such 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)

#### **1252.217-79 Delays.**

As prescribed at 1217.7001(b), insert the following clause:

#### **Delays (NOV 2022)**

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

#### **1252.217-80 Department of Labor Safety and Health Regulations for Ship Repair.**

As prescribed at 1217.7001(b), insert the following clause:

#### **Department of Labor Safety and Health Regulations for Ship Repair (NOV 2022)**

Nothing contained in this contract 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 Occupational Safety and Health Standards for Shipyard Employment (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

#### **1252.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work.**

As prescribed in 1222.101-71(a), insert the following clause:

#### **Strikes or Picketing Affecting Timely Completion of the Contract Work (NOV 2022)**

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

**1252.222-71 Strikes or Picketing Affecting Access to a DOT Facility.**

As prescribed in 1222.101-71(b), insert the following clause:

**Strikes or Picketing Affecting Access to a DOT Facility (NOV 2022)**

If the Contracting Officer notifies the Contractor in writing that a strike or picketing—(a) Is directed at the Contractor or subcontractor or any employee of either; and (b) Impedes or threatens to impede access by any person to a DOT facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

**1252.222-72 Contractor Cooperation in Equal Employment Opportunity and Anti-Harassment Investigations.**

As prescribed in 1222.810-70, insert the following clause:

**Contractor Cooperation in Equal Employment Opportunity and Anti-Harassment Investigations (NOV 2022)**

(a) *Definitions.* As used in this clause—*Complaint* means a formal or informal complaint that has been filed with DOT management, DOT agency Equal Employment Opportunity (EEO) officials, the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP) or a court of competent jurisdiction.

*Contractor employee* means all current Contractor employees who work or worked under this contract. The term also includes current employees of subcontractors who work or worked under this contract. In the case of Contractor and subcontractor employees who worked under this contract, but who are no longer employed by the Contractor or subcontractor, or who have been assigned to another entity within the Contractor's or subcontractor's organization, the Contractor shall provide DOT with that employee's last known mailing address, email address, and telephone number, if that employee has been identified as a witness in an EEO or Anti-Harassment complaint or investigation.

*Good faith cooperation* means, but is not limited to, making Contractor employees available, with the presence or assistance of counsel as deemed appropriate by the Contractor, for:

(1) Formal and informal interviews by EEO counselors, the OFCCP, or other Agency officials processing EEO or Anti-Harassment complaints;

(2) Formal or informal interviews by EEO investigators charged with investigating complaints of unlawful discrimination filed by Federal employees;

(3) Reviewing and signing appropriate affidavits or declarations summarizing statements provided by such Contractor

employees during EEO or Anti-Harassment investigations;

(4) Producing documents requested by EEO counselors, EEO investigators, OFCCP investigators, Agency employees, or the EEOC in connection with a pending EEO or Anti-Harassment complaint; and

(5) Preparing for and providing testimony in depositions or in hearings before the Merit Systems Protection Board, EEOC, OFCCP, and U.S. District Court.

(b) *Cooperation with investigations.* In addition to complying with the clause at FAR 52.222-26, Equal Opportunity, the Contractor shall, in good faith, cooperate with the Department of Transportation in investigations of EEO complaints processed pursuant to 29 CFR part 1614 and internal Anti-Harassment investigations.

(c) *Compliance.* Failure on the part of the Contractor or its subcontractors to comply with the terms of this clause may be grounds for the Contracting Officer to terminate this contract for default or for cause in accordance with the termination clauses in the contract.

(d) *Subcontract flowdown.* The Contractor shall include the provisions of this clause in all subcontract solicitations and subcontracts awarded, at any tier, under this contract.

(End of clause)

**1252.223-70 Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits.**

As prescribed in 1223.303, insert the following clause:

**Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits (NOV 2022)**

The Contractor has \_\_\_ or does not have \_\_\_ [*Contractor check applicable response*] all licenses and permits required by Federal, State, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it must obtain all requisite licenses and permits within \_\_\_ [*Contracting Officer insert number*] calendar days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

**1252.223-71 Accident and Fire Reporting.**

As prescribed in 1223.7000(a), insert the following clause:

**Accident and Fire Reporting (NOV 2022)**

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes—

(1) A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of \$1,000 or more to Government-owned or leased property, either real or personal;

(3) Damage of \$1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) of this section shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Government-owned or leased property (either real or personal), the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed in writing within 24 hours to the Contracting Officer. Such report shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) of this section may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of—

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.

Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

**1252.223-72 Protection of Human Subjects.**

As prescribed in 1223.7000(b), insert the following clause:

**Protection of Human Subjects (NOV 2022)**

(a) The Contractor shall comply with 49 CFR part 11, DOT's regulations for the protection of human subjects participating in activities supported directly or indirectly by contracts from DOT. In addition, the Contractor shall comply with any DOT Operating Administration (OA)-specific policies and procedures on the protection of human subjects.

(b) To demonstrate compliance with the subject DOT regulations and to protect human subjects, the Contractor shall ensure the following:

(1) The Contractor shall establish and maintain a committee competent to review projects and activities that involve human subjects.

(2) The committee shall be assigned responsibility to determine, for each activity planned and conducted, that—

(i) The rights and welfare of subjects are adequately protected;

(ii) The risks to subjects are outweighed by potential benefits; and

(iii) The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

(3) Committee reviews shall be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the

members. Members shall be excluded from review of projects or activities in which they have an active role or a conflict of interests.

(4) Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

(5) Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participating in an activity shall be provided.

(6) The committee shall maintain records of committee review of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any review that adversely affects the rights or welfare of the individual subjects. Such materials shall be made available to DOT upon request.

(7) The retention period of such records and materials shall be as specified at FAR 4.703.

(c) Periodic reviews shall be conducted by the Contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(d) If the Contractor has or maintains a relationship with a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and any applicable OA policies and procedures that apply, that IRB will be considered acceptable for the purposes of this contract.

(End of clause)

#### **1252.223-73 Seat Belt Use Policies and Programs.**

As prescribed in 1223.7000(c), insert the following clause:

#### **Seat Belt Use Policies and Programs (NOV 2022)**

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Click it or Ticket seat belt safety section of NHTSA's website at <https://www.nhtsa.gov/campaign/click-it-or-ticket> and <https://www.nhtsa.gov/risky-driving/seat-belts>.

(End of clause)

#### **1252.228-70 Loss of or Damage to Leased Aircraft.**

As prescribed in 1228.306-70(a), insert the following clause:

#### **Loss of or Damage to Leased Aircraft (NOV 2022)**

(a) Except normal wear and tear, the Government assumes all risk of loss of, or damage to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228-71, Fair Market Value of Aircraft, less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it in its discretion. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

#### **1252.228-71 Fair Market Value of Aircraft.**

As prescribed in 1228.306-70(a), insert the following clause:

#### **Fair Market Value of Aircraft (NOV 2022)**

For purposes of clause 1252.228-70, Loss of or Damage to Leased Aircraft, the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below—

(a) \$ \_\_\_\_\_; [*Contracting Officer insert value*] or

(b) If the Contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

#### **1252.228-72 Risk and Indemnities.**

As prescribed in 1228.306-70(a) and (d), insert the following clause:

#### **Risk and Indemnities (NOV 2022)**

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

#### **1252.228-73 Command of Aircraft.**

As prescribed in 1228.306-70(d), insert the following clause:

#### **Command of Aircraft (NOV 2022)**

During the performance of a contract for out-service flight training for DOT, whether the instruction to DOT personnel is in leased, contractor-provided, or Government-provided aircraft, contractor personnel shall always, during the entirety of the course of training and during operation of the aircraft, remain in command of the aircraft. At no time shall other personnel be permitted to take command of the aircraft.

(End of clause)

#### **1252.228-74 Notification of Payment Bond Protection.**

As prescribed in guidance at 1228.106-470, insert the following clause:

#### **Notification of Payment Bond Protection (NOV 2022)**

(a) The prime contract is subject to the Bonds statute (historically referred to as the Miller Act) (40 U.S.C. chapter 31, subchapter III), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Bonds statute for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Bonds statute should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is: [*Contracting Officer fill-in prime contractor's surety information*]

(Name)

(Street Address)

(City, State, Zip Code)

(Contact & Tel. No.)

(d) Subcontract flowdown requirements. This clause shall be flowed down to all subcontractors. Prime contractors shall insert this notice clause in all first-tier subcontracts and shall require the clause to be subsequently flowed down by all first-tier subcontractors to all their subcontractors, at any tier. This notice contains information pertaining to the surety that provided the payment bond under the prime contract and is required to be inserted in its entirety to include the information set forth in paragraph (c).

(End of clause)

**1252.231-70 Date of Incurrence of Costs.**

As prescribed in 1231.205-3270(b), insert the following clause:

**Date of Incurrence of Costs (NOV 2022)**

The Contractor shall be entitled to reimbursement for costs incurred on or after \_\_\_\_ [Contracting Officer insert date] in an amount not to exceed \$ \_\_\_\_ [Contracting Officer insert amount] that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

**1252.232-70 Electronic Submission of Payment Requests.**

As prescribed in 1232.7005, insert the following clause:

**Electronic Submission of Payment Requests (NOV 2022)**

- (a) *Definitions.* As used in this clause—
  - (1) *Contract financing payment* has the meaning given in FAR 32.001.
  - (2) *Payment request* means a bill, voucher, invoice, or request for contract financing payment or invoice payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), “Content of Invoices,” this clause, and the applicable Payment clause included in this contract.
  - (3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned

- documents are not acceptable electronic forms for submission of payment requests.
- (4) *Invoice payment* has the meaning given in FAR 32.001.
- (b) *Electronic payment requests.* Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Governmentwide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Processing system.* The Department of Transportation utilizes the DELPHI system for processing invoices. The DELPHI module for submitting invoices is called *iSupplier*. Access to DELPHI is granted with electronic authentication of credentials (name & valid email address) utilizing the GSA credentialing platform *login.gov*. Vendors submitting invoices are required to submit invoices via *iSupplier* (DELPHI) and authenticated via *www.login.gov*.

- (d) *Invoice requirements.* To receive payment and in accordance with the Prompt Payment Act, all invoices submitted as attachments in *iSupplier* (DELPHI) shall contain the following:
  - (1) Invoice number and invoice date.
  - (2) Period of performance covered by invoice.
  - (3) Contract number and title.
  - (4) Task/Delivery Order number and title (if applicable).
  - (5) Amount billed (by CLIN), current and cumulative.
  - (6) Total (\$) of billing.
  - (7) Cumulative total billed for all contract work to date.
  - (8) Name, title, phone number, and mailing address of person to be contacted in the event of a defective invoice.
  - (9) Travel. If the contract includes allowances for travel, all invoices which include charges pertaining to travel expenses will catalog a breakdown of reimbursable expenses with the appropriate receipts to substantiate the travel expenses.

- (e) *Payment system registration.* All persons accessing the *iSupplier* (DELPHI) will be required to have their own unique user ID and password and be credentialed through *login.gov*.
  - (1) *Electronic authentication.* See *www.login.gov* for instructions.
  - (2) To create a *www.login.gov* account, the user will need a valid email address and a working phone number. The user will create a password and then *www.login.gov* will

- reply with an email confirming the email address.
- (3) *iSupplier* (DELPHI) registration instructions: New users should navigate to: <http://einvoice.esc.gov> to establish an account. Users are required to log in to *iSupplier* (DELPHI) every 45 days to keep it active.
- (4) *Training on DELPHI.* To facilitate use of DELPHI, comprehensive user information is available at <http://einvoice.esc.gov>.
- (5) *Account Management.* Vendors are responsible to contact their assigned COR when their firm’s points of contacts will no longer be submitting invoices, so they can be removed from the system.

(f) *Waivers.* For contractors/vendors who are unable to utilize DOT’s DELPHI system, waivers may be considered by DOT on a case-by-case basis. Vendors should contact their Contracting Officer’s Representative (COR) for procedures.

(g) *Exceptions and alternate payment procedures.* If, based on one of the circumstances set forth in 1232.7002(a) or (b), and the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer’s written authorization with each payment request. If DELPHI is succeeded by later technology, the Contracting Officer will supply the Contractor with the latest applicable electronic invoicing instructions.

(End of clause)

**1252.232-71 Limitation of Government’s Obligation.**

As prescribed in 1232.770-7, insert the following clause:

**Limitation of Government’s Obligation (NOV 2022)**

(a) Funding is not currently available to fully fund this contract due to the Government operating under a continuing resolution (CR). The item(s) listed in the table below are being incrementally funded as described below. The funding allotted to these item(s) is presently available for payment and allotted to this contract. This table will be updated by a modification to the contract when additional funds, if any, are made available to this contract.

Contract line item No. (CLIN)	CLIN total price	Funds allotted to the CLIN	Funds required for complete funding of the CLIN
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
<b>Totals</b> .....	\$	\$	\$

(b) For the incrementally funded CLIN(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 any invoice payments to which the Contractor is entitled and

reimbursement of authorized termination costs in the event of termination of those CLIN(s) for the Government's convenience, does not exceed the total amount currently obligated to those CLIN(s). The Contractor is not authorized to continue work on these 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 CLIN(s) of the contract regardless of anything to the contrary in any other clause, including but not limited to the clause entitled "Termination for Convenience of the Government" or paragraph (l) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions—Commercial Products and Commercial Services."

(c) Notwithstanding paragraph (h) of this clause, the Contractor shall notify the Contracting Officer in writing at least 30 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 item(s) identified in paragraph (a) of this clause. The notification shall state the estimated date when that point will be reached and an estimate of additional funding, if any, needed to continue performance. The notification shall also advise the Contracting Officer of the estimated amount of additional funds required for the timely performance of the item(s) funded pursuant to this contract. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed upon substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the terms of this contract authorizing termination for the convenience of the Government. Failure to make the notification required by this paragraph, whether for reasons within or beyond the Contractor's control, will not increase the maximum amount payable to the Contractor under paragraphs (a) and (b) of this clause.

(d) The Government may, at any time prior to termination, allot additional funds for the performance of the item(s) identified in paragraph (a) of this clause.

(e) The termination provisions of paragraphs (a) through (h) of this clause do not limit the rights of the Government under the clause entitled "Default" or paragraph (m) entitled "Termination for Cause," of the clause at FAR 52.212-4, "Commercial Terms and Conditions—Commercial Products and Commercial Services." The provisions of this clause are limited to the work and allotment of funds for the item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded.

(f) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the Government's termination for convenience terms set forth in this contract.

(g) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(h) The parties contemplate that the Government will allot funds to this contract from time to time as the need arises and as funds become available. There is no fixed schedule for providing additional funds.

(End of clause)

#### 1252.235-70 Research Misconduct.

As prescribed in 1235.070-1, insert the following clause:

##### Research Misconduct (NOV 2022)

(a) *Definitions.* As used in this clause—  
*Adjudication* means the process of reviewing recommendations from the investigation phase and determining appropriate corrective actions.

*Complainant* means the person who makes an allegation of research misconduct or the person who cooperates with an inquiry or investigation.

*DOT Oversight Organization* is the Department of Transportation (DOT) operating administration or Secretarial office sponsoring or managing Federally-funded research.

*Evidence* includes, but is not limited to, research records, transcripts, or recordings of interviews, committee correspondence, administrative records, grant applications and awards, manuscripts, publications, expert analyses, and electronic data.

*Fabrication* means making up data or results and recording or reporting them.

*Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Inquiry* means preliminary information gathering and fact-finding to determine if an allegation, or apparent instance of research misconduct, warrants an investigation.

*Investigation* means formal collection and evaluation of information and facts to determine if research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.

*Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Research misconduct does not include honest error or differences of opinion.

*Research and Technology Coordinating Council (RTCC)* is the lead DOT entity for coordination of all actions related to allegations of research misconduct. The respondent in a research misconduct finding may appeal through the RTCC to the Deputy Secretary of Transportation.

*Research institution* includes any Contractor conducting research under DOT-funded contractual instruments, contracts, and similar instruments.

*Research misconduct* means fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or difference of opinion.

*Research record* means the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory

records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

*Respondent* means the person against whom an allegation of research misconduct has been made, or the person whose actions are the focus of the inquiry or investigation.

(b) *General guidelines.* (1) *Confidentiality.* DOT organizations, including research organizations, are required to safeguard the confidentiality of the inquiry, investigation and decision-making processes, including maintaining complete confidentiality of all records and identities of respondents and complainants.

(2) *Retaliation prohibited.* If a complainant who has reported possible research misconduct alleges retaliation on the part of DOT organization management, the report will be addressed by management officials who will conduct an inquiry into the allegations followed by an appropriate management action.

(3) *Separation of phases.* DOT organizations and research organizations must ensure the separation of the Inquiry, Investigation and Determination Phases of this process.

(4) In general, DOT organizations must strive to protect the interests of the Federal Government and the public in carrying out this process.

(c) *Elements to support a finding of research misconduct.* Research institutions (including Contractors) that receive DOT funds shall respond to allegations of research misconduct. The following elements describe the type of behavior, level of intent, and burden of proof required to support a finding of research misconduct:

(1) There must be a significant departure from the accepted practices of the relevant research community;

(2) The misconduct must have been committed intentionally, knowingly, or recklessly; and

(3) The allegation must be proven by a preponderance of the evidence.

(d) *DOT Oversight Organization Investigation.* The DOT oversight organization may proceed with its own investigation at any time if:

(1) DOT determines the research institution is not prepared to handle the allegation in a manner consistent with this policy.

(2) DOT involvement is needed to protect the public interest, including public health and safety.

(3) The allegation involves an entity of sufficiently small size (or an individual) that it cannot sufficiently conduct the investigation itself.

(4) The DOT oversight organization may take, or cause to be taken, interim administrative actions (including special certifications, assurances, or other administrative actions) when deemed appropriate to protect the welfare of human and animal subjects of research, prevent inappropriate use of Federal funds, or otherwise protect the public interest and safety.

(e) *Investigating research misconduct.* Research institutions, or in limited circumstances discussed in paragraph (d) the

DOT Oversight Organization shall use the following procedures to investigate allegations of research misconduct:

(1) Inquire promptly into the research misconduct allegation and complete an initial inquiry within 60 calendar days after receipt of the allegation.

(2) Notify the Contracting Officer immediately, in writing, when an inquiry results in a determination that an investigation is warranted, and promptly begin an investigation.

(3) Ensure the objectivity and expertise of the individuals selected to review allegations and conduct investigations.

(4) Conduct the investigation according to established internal procedures and complete it within 120 calendar days of completing the initial inquiry.

(5) Document the investigation. Include documentation that—

(i) Describes the allegation(s);

(ii) Lists the investigators;

(iii) Describes the methods and procedures used to gather information and evaluate the allegation(s);

(iv) Summarizes the records and data compiled, states the findings, and explains the supporting reasons and evidence;

(v) States the potential impact of any research misconduct; and

(vi) Describes and explains any institutional sanctions or corrective actions recommended or imposed as appropriate within its jurisdiction and as consistent with other relevant laws.

(6) Provide the respondent (the person against whom an allegation of research misconduct has been made) with a reasonable opportunity (e.g., 30 calendar days) to review and respond to the investigation report. The respondent's written comments or rebuttal will be made part of the investigative record.

(7) Within 30 calendar days after completion of an investigation, forward investigative reports, documentation, and respondent's response to the Contracting Officer who will coordinate with the DOT oversight organization(s) sponsoring and/or monitoring the federally-funded research.

(8) Time extensions. Contractors should request time extensions as needed from the Contracting Officer of the appropriate DOT oversight organization. The Contracting Officer has discretion to waive time requirements for good cause.

(f) *Activity sanctions or corrective actions.* Upon receipt of the investigative reports from the contractor, the DOT oversight organization, in conjunction with the Contracting Officer, will review the report, and determine the appropriate administrative action to be taken. In deciding what actions to take, the oversight organizations should consider: the severity of the misconduct; the degree to which the misconduct was knowing, intentional, or reckless; and whether it was an isolated event or part of a pattern. Sanctions or corrective actions may range as follows—

(1) *Minimal restrictions*—such as a letter of reprimand, additional conditions on awards, requiring third-party certification of accuracy or compliance with particular policies, regulations, guidelines, or special terms and conditions;

(2) *Moderate restrictions*—such as limitations on certain activities or expenditures under an active award or special reviews of requests for funding; or

(3) *More severe restrictions*—such as termination of an active award or government-wide suspension or debarment.

(g) *Appeals and final administrative action.* (1) The Federal Acquisition Regulation governs in all matters pertaining to termination of the contract and suspension/debarment.

(2) In all other cases, the Contractor may appeal the sanction or corrective action through the DOT Research and Technology Coordinating Council (RTCC) to the Deputy Secretary of Transportation, in writing within 30 calendar days after receiving written notification of the research misconduct finding and associated administrative action(s). The Contractor shall mail a copy of the appeal to the Contracting Officer.

(3) If there is no request for appeal within 30 calendar days, the administrative actions of the oversight organization shall be final.

(4) If a request for appeal is received by the RTCC within the 30-calendar day limit, the Deputy Secretary may have the RTCC review the appeal and make recommendations.

(5) The RTCC on behalf of the Deputy Secretary will normally inform the appellant of the final decision on an appeal within 60 calendar days of receipt. This decision will then be the final DOT administrative action.

(h) *Criminal or civil fraud violations.* When the DOT oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent. If criminal or civil fraud violations may have occurred, the oversight organization should promptly refer the matter to the DOT Inspector General, the Department of Justice or other appropriate investigative body. The DOT oversight organization, in conjunction with the Contracting Officer will notify the respondent in writing of its action, sanctions to be imposed if applicable, and the DOT appeal procedures.

(i) *Subcontract flowdown.* The Contractor shall include the substance of this clause in all subcontracts that involve research.

(End of clause)

#### 1252.235–71 Technology Transfer.

As prescribed in 1235.011–70, insert the following clause:

##### Technology Transfer (NOV 2022)

(a) The Contractor, in accordance with the provisions in the attached Statement of Work, will develop a Technology Transfer Plan to be approved by \_\_\_\_\_ [Fill-in: Contracting Officer to fill-in the cognizant DOT/OA] prior to the initiation of any work under this contract and shall execute the approved plan throughout the conduct of this Agreement. Such plan shall include, at a minimum—

(1) A description of the problem and technical solutions being researched, including any potential or identified technology developments that are the

intended output of or which may be derived from the research;

(2) A list identifying and categorizing by interest potential stakeholders in the outputs of the research to be performed;

(3) A plan for engaging the identified potential stakeholders to determine interest in and obtain suggested refinements to the research, before and during the conduct of this contract, to enhance the likelihood of adoption/implementation of the research outputs. Such engagement activities shall comprise communicating research status to identified stakeholders, soliciting their feedback; disseminating research outputs, and identifying whether the outputs were adopted/implemented;

(4) A proposed delivery or demonstration activity (e.g., conference presentation of a final report, demonstration of software, or demonstration of tangible output);

(5) A draft plan for the commercialization of any research outputs, including the specific identification of stakeholders most likely to be interested in the commercialization of the research outputs;

(6) The identification of the specific methods and channels for dissemination of the research outputs (e.g., publication, licensing to a third party, or manufacture and sale); and

(7) A plan for tracking and reporting the research outputs, outcomes, and impacts to [Fill-in: Contracting Officer to fill in the cognizant DOT/OA].

(b) The Contractor shall provide to \_\_\_\_\_ [Fill-in: Contracting Officer to fill-in the cognizant DOT/OA] at least once every six months, or as an attachment to any more frequent research progress reports, a Technology Transfer Report addressing and updating each element of their approved Technology Transfer Plan. Such report shall include—

(1) An updated description of the problem and technical solution(s) being researched, particularly where any revisions to the research are based on feedback from a stakeholder engagement;

(2) A summary of overall technology transfer progress;

(3) An updated listing of interested stakeholders and an identification of their potential role (e.g., research sponsor, potential end-user, or regulator);

(4) A listing of the stakeholders engaged since the most recently submitted Technology Transfer Report;

(5) The identification of any additional stakeholder engagement activity (including the mechanism used to engage the stakeholder) and the results of such activity;

(6) The conduct and results of any delivery/demonstration activity occurring since the most recently submitted Report update, including the identification of any stakeholder participants;

(7) An acknowledgement of the submission of any technical or progress report that would satisfy the Public Access requirement and whether such submissions are properly represented in the USDOT Research Hub and the National Transportation Library; and

(8) Any information on instances of any use of an output of research conducted under this contract.

(End of clause)

**1252.236–70 Special Precautions for Work at Operating Airports.**

As prescribed in 1236.570, insert the following clause:

**Special Precautions for Work at Operating Airports (NOV 2022)**

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor that would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be established by airport management. Vehicles shall be operated to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

**1252.237–70 Qualifications of Contractor Employees.**

As prescribed in 1237.110–70(a), insert the following clause:

**Qualifications of Contractor Employees (NOV 2022)**

(a) *Definition. Sensitive information*, as used in this clause, means any information that is proprietary data or, if subject to unauthorized access, modification, loss, or misuse, could adversely affect the national interest, the conduct of Federal programs, or the privacy of individuals specified in The Privacy Act, 5 U.S.C. 552a, but has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

(b) Work under this contract may involve access to DOT facilities or sensitive information or resources (e.g., information technology including computer systems). To protect sensitive information, which shall not be disclosed by the contractor unless authorized in writing by the Contracting Officer, the Contractor shall provide training to any contractor employees authorized to access sensitive information, and upon request of the Government, provide information to assist the Government in determining an individual's suitability to have authorization.

(c) The Contracting Officer may require dismissal from work under this contract of those employees deemed incompetent, careless, insubordinate, unsuitable, or otherwise objectionable, or whose continued employment is deemed contrary to the public interest or inconsistent with the best interest of national security.

(d) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's Representative (COR) or Program Manager's (PM) request, the Contractor's employees shall be fingerprinted or subject to other investigations as required.

(e) The Contractor shall ensure that contractor employees working on this contract are citizens of the United States of America or non-citizens who have been lawfully admitted for permanent residence or employment (indicated by immigration status) as evidenced by U.S. Citizenship and Immigration Services (USCIS) documentation.

(f) Subcontract flow-down requirement. The Contractor shall include this clause, including this paragraph (f), in subcontracts whenever this clause is included in the prime contractor's contract.

(End of clause)

**1252.237–71 Certification of Data.**

As prescribed in 1237.7003, insert the following provision:

**Certification of Data (NOV 2022)**

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (e.g., company profile; qualifications; background statements; brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 and 49 CFR part 31 and/or; (3) termination for default or for cause under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors and submit such certification(s) with its offer.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Typed Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. 1001.

(End of provision)

**1252.237–72 Prohibition on Advertising.**

As prescribed in 1213.7101 and 1237.7003, insert the following clause:

**Prohibition on Advertising (NOV 2022)**

The contractor or its representatives (including training instructors) shall not advertise or solicit business from attendees for private, non-Government training during contracted-for training sessions. This prohibition extends to unsolicited oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes. The contractor agrees to insert this clause in its subcontracts.

(End of clause)

**1252.237–73 Key Personnel.**

As prescribed in 1237.110–70(b), insert the following clause:

**Key Personnel (NOV 2022)**

(a) The personnel as specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed during the course of the contract by adding or deleting personnel, as appropriate.

(b) Before removing, replacing, or diverting any of the specified individuals, the Contractor shall notify the contracting officer, in writing, before the change becomes effective. The Contractor shall submit information to support the proposed action to enable the contracting officer to evaluate the potential impact of the change on the contract. The Contractor shall not remove or replace personnel under this contract until the Contracting Officer approves the change

in writing. The key personnel under this contract are:

[Contracting Officer insert specified key personnel]

(End of clause)

**1252.239–70 Security Requirements for Unclassified Information Technology Resources.**

As prescribed in 1239.106–70, insert the following clause:

**Security Requirements for Unclassified Information Technology Resources (NOV 2022)**

(a) The Contractor shall be responsible for information technology security for all systems connected to a Department of Transportation (DOT) network or operated by the Contractor for DOT, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to DOT information that directly supports the mission of DOT. The term “information technology,” as used in this clause, means any equipment or interconnected system or subsystem of equipment, including telecommunications equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This includes both major applications and general support systems as defined by OMB Circular A–130. Examples of tasks that require security provisions include—

- (1) Hosting of DOT e-Government sites or other IT operations;
- (2) Acquisition, transmission, or analysis of data owned by DOT with significant replacement cost should the contractor’s copy be corrupted; and
- (3) Access to DOT general support systems/major applications at a level beyond that granted the general public, e.g., bypassing a firewall.

(b) The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that the Contractor will follow to ensure appropriate security of IT resources developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor’s IT Security Plan shall comply with applicable Federal Laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and DOT policies and procedures, as amended during the term of this contract, which include, but are not limited to the following:

- (1) OMB Circular A–130, Managing Information as a Strategic Resource;
- (2) National Institute of Standards and Technology (NIST) Guidelines;
- (3) DOT CIO IT Policy (CIOP) compendium and associated guidelines;
- (4) DOT Order 1630.2C, Personnel Security Management; and

(5) DOT Order 1351.37, Departmental Cyber Security Policy.

(c) Within 30 days after contract award, the contractor shall submit the IT Security Plan to the DOT Contracting Officer for review. This plan shall detail the approach contained in the offeror’s proposal or sealed bid. Upon acceptance by the Contracting Officer, the Plan shall be incorporated into the contract by contract modification.

(d) Within six (6) months after contract award, the Contractor shall submit written proof of IT Security accreditation to the Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. Accreditation shall be in accordance with DOT policy available from the Contracting Officer upon request. The Contractor shall submit along with this accreditation a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. The accreditation and accompanying documents, to include a final security plan, risk assessment, security test and evaluation, and disaster recovery/continuity of operations plan, upon acceptance by the Contracting Officer, will be incorporated into the contract by contract modification.

(e) On an annual basis, the Contractor shall verify in writing to the Contracting Officer that the IT Security Plan remains valid.

(f) The Contractor shall ensure that the official DOT banners are displayed on all DOT systems (both public and private) operated by the Contractor that contain Privacy Act information before allowing anyone access to the system. The DOT CIO will make official DOT banners available to the Contractor.

(g) The Contractor shall screen all personnel requiring privileged access or limited privileged access to systems operated by the Contractor for DOT or interconnected to a DOT network in accordance with DOT Order 1630.2C Personnel Security Management, as amended.

(h) The Contractor shall ensure that its employees performing services under this contract receive annual IT security training in accordance with OMB Circular A–130, FISMA, and NIST requirements, as amended, with a specific emphasis on rules of behavior.

(i) The Contractor shall provide the Government access to the Contractor’s and subcontractors’ facilities, installations, operations, documentation, databases and personnel used in performance of the contract. The Contractor shall provide access to enable a program of IT inspection (to include vulnerability testing), investigation, and audit (to safeguard against threats and hazards to the integrity, availability and confidentiality of DOT data or to the function of information technology systems operated on behalf of DOT), and to preserve evidence of computer crime.

(j) The Contractor shall incorporate and flow down the substance of this clause to all subcontracts that meet the conditions in paragraph (a) of this clause.

(k) The Contractor shall immediately notify the Contracting Officer when an employee who has access to DOT information systems or data terminates employment.

(End of clause)

**1252.239–71 Information Technology Security Plan and Accreditation.**

As prescribed in 1239.106–70, insert the following provision:

**Information Technology Security Plan and Accreditation (NOV 2022)**

All offers submitted in response to this solicitation shall address the approach for completing the security plan and accreditation requirements in clause 1252.239–70, Security Requirements for Unclassified and Sensitive Information Technology Resources.

(End of provision)

**1252.239–72 Compliance with Safeguarding DOT Sensitive Data Controls.**

As prescribed in TAR 1239.7003(a), insert the following clause:

**Compliance With Safeguarding DOT Sensitive Data Controls (NOV 2022)**

(a) The Contractor shall implement security requirements contained in clause 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, for all DOT sensitive data on all Contractor information systems that support the performance of this contract.

(b) Contractor information systems not part of an information technology service or system operated on behalf of the Government as part of this contract are not subject to the provisions of this clause.

(c) By submission of this offer, the Offeror represents that it will implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171, Revision 2, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” at <https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final> that are in effect at the time the solicitation is issued or as authorized by the contracting officer.

(d) If the Offeror proposes to vary from any security requirements specified by NIST SP 800–171, Rev. 2 in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DOT Chief Information Officer (CIO), a written explanation of—

- (1) Why a particular security requirement is not applicable; or
- (2) How the Contractor will use an alternative, but equally effective, security measure to satisfy the requirements of NIST SP 800–171, Rev. 2.

(e) The Office of the DOT CIO will evaluate offeror requests to vary from NIST SP 800–171, Rev. 2 requirements and inform the Offeror in writing of its decision before contract award. The Contracting Officer will incorporate accepted variance(s) from NIST SP 800–171, Rev. 2 into any resulting contract.

(End of clause)

**1252.239–73 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.**

As prescribed in 1239.7003(b), insert the following clause:

**Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (NOV 2022)**

(a) *Definitions.* As used in this clause—  
*Compromise* means disclosure of information to unauthorized persons, or a violation of the security policy of a system, whereby without authorization information is disclosed, modified, destroyed, lost, or copied to unauthorized media—whether intentionally or unintentionally.

*DOT sensitive data* means unclassified information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the Contractor by or on behalf of DOT in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Contractor in support of the performance of the contract.

*Cyber incident* means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

*Media* means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which DOT sensitive data is recorded, stored, or printed within a covered contractor information system.

*DOT technical information* 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. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Restrictions.* (1) The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract derived from a third-party's reporting of a cyber incident, pursuant to TAR clause, 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting (or derived from such information obtained under that clause):

(2) The Contractor shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to clause 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, and shall not be used for any other purpose.

(3) The Contractor shall protect the information against unauthorized release or disclosure.

(4) 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 the information.

(5) The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and Contractor, as required by paragraph (b)(3) of this clause.

(6) A breach of these obligations or restrictions may subject the Contractor to—  
(i) Criminal, civil, administrative, and contractual penalties and other appropriate remedies; and

(ii) Civil actions for damages and other appropriate remedies by the third party that reported the cyber incident, as a third-party beneficiary of this clause.

(c) *Subcontract flowdown requirement.* The Contractor shall include this clause, including this paragraph (c), in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered DOT sensitive data and cyber incident reporting, including subcontracts for commercial products or commercial services, without alteration, except to identify the parties.

(End of clause)

**1252.239–74 Safeguarding DOT Sensitive Data and Cyber Incident Reporting.**

As prescribed in 1239.7003(c), insert the following clause:

**Safeguarding DOT Sensitive Data and Cyber Incident Reporting (NOV 2022)**

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

*Adequate security* means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information against the probability of occurrence.

*Compromise* means disclosure of information to unauthorized persons, or a violation of the security policy of a system, whereby without authorization information is disclosed, modified, destroyed, lost, or copied to unauthorized media—whether intentionally or unintentionally.

*Contractor attributional/proprietary information* means information that identifies the Contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the Contractor(s) (e.g., program description, facility locations), personally identifiable information, trade secrets, commercial or financial information, or other commercially sensitive information not customarily shared outside of a company.

*Covered contractor information system* means an unclassified information system

owned or operated by or for a Contractor and that processes, stores, or transmits DOT sensitive data.

*DOT sensitive data* means unclassified information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulation, and Government-wide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the Contractor by or on behalf of DOT in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the Contractor in support of the performance of the contract.

*Cyber incident* means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

*Federal record* as defined in 44 U.S.C. 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. The term Federal record—

(1) Includes all DOT records;

(2) Does not include personal materials;

(3) Applies to records created, received, or maintained by Contractors pursuant to a DOT contract; and

(4) May include deliverables and documentation associated with deliverables.

*Forensic analysis* means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

*Malicious software* means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

*Media* means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which DOT sensitive data is recorded, stored, or printed within a covered contractor information system.

*Operationally critical support* means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

*Spillage* security incident means an incident that results in the transfer of classified or unclassified information onto an information system not accredited (*i.e.*, authorized) for the appropriate security level.

*Technical information* 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, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security.* The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered Contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 1252.239-76, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (*i.e.*, other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered Contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(iv) of this clause, the contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, Revision 2, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii) The Contractor shall implement NIST SP 800-171, Rev. 2, no later than 30 days after the award of this contract. The Contractor shall notify Contract Officer of any security requirements specified by NIST SP 800-171, Rev. 2 not implemented within 30 days of time of contract award.

(iii) If the Offeror proposes to vary from any security requirements specified by NIST SP 800-171, Rev. 2 in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DOT Chief Information Officer (CIO), a written explanation of—

(A) Why a particular security requirement is not applicable; or

(B) How the Contractor will use an alternative, but equally effective, security measure to satisfy the requirements of NIST SP 800-171, Rev. 2.

(iv) The Office of the DOT CIO will evaluate offeror requests to vary from NIST SP 800-171, Rev. 2 requirements and inform the Offeror in writing of its decision before contract award. The Government will incorporate accepted variance(s) from NIST SP 800-171, Rev. 2 into any resulting contract.

(v) The Contractor need not implement any security requirement adjudicated by an authorized representative of the DOT CIO to be nonapplicable, or have an alternative, but equally effective, security measure that may be implemented in its place.

(vi) If the DOT CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when the Contractor requests its recognition under this contract

(3) If the Contractor intends to use an external cloud service provider to store, process, or transmit any DOT sensitive data in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (h) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(4) The Contractor will apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (b)(2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (*e.g.*, medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan, as required by, clause 1252.239-70, Security Requirements for Unclassified Information Technology Resources.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the DOT sensitive data residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of DOT sensitive data, including, but not limited to, identifying

compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised DOT sensitive data or whether the incident affects the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DOT Security Operations Center (SOC) 24x7x365 at phone number: 571-209-3080 (Toll Free: 1-866-580-1852).

(d) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DOT and shall include, at a minimum, the required elements in paragraph (c)(1)(i).

(e) *Spillage.* Upon notification by the Government of a spillage, or upon the Contractor's discovery of a spillage, the Contractor shall cooperate with the Contracting Officer to address the spillage in compliance with DOT policy.

(f) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, the Contractor shall submit the malicious software to DOT in accordance with instructions provided by the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(g) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DOT to request the media or decline interest.

(h) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DOT, the Contractor shall provide DOT with access to additional information or equipment that is necessary to conduct a forensic analysis.

(i) *Cyber incident damage assessment activities.* If DOT elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (c) of this clause.

(j) *DOT safeguarding and use of Contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that includes Contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the Contractor attributional/proprietary information that is included in such authorized release consistent with applicable law.

(k) *Use and release of Contractor attributional/proprietary information not created by or for DOT.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is not created by or for DOT is authorized to be released outside of DOT—

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 1252.239–73, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information; or

(5) With Contractor’s consent; or

(6) As otherwise required by law.

(l) *Use and release of Contractor attributional/proprietary information created by or for DOT.* Information that is obtained from the Contractor (or derived from information obtained from the Contractor) under this clause that is created by or for DOT (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DOT for purposes and activities authorized by paragraph (j) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government’s use and release of such information.

(m) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(n) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor’s responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable Government statutory or regulatory requirements.

(o) *Subcontract flowdown requirements.* The Contractor shall—

(1) Include this clause, including this paragraph (o), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve DOT sensitive data, including subcontracts for commercial products and commercial services, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as DOT sensitive data and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a

request to vary from a NIST SP 800–171, Rev. 2 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(iii) of this clause; and

(ii) Provide the incident report number, automatically assigned by DOT, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DOT as required in paragraph (c) of this clause.

(End of clause)

**1252.239–75 DOT Protection of Information About Individuals, PII, and Privacy Risk Management Requirements.**

As prescribed in 1239.7104, insert the following clause:

**DOT Protection of Information About Individuals, PII, and Privacy Risk Management Requirements (NOV 2022)**

(a) *Compliance with standards.* To the extent Contractor creates, maintains, acquires, discloses, uses, or has access to PII in furtherance of the contract, Contractor shall comply with all applicable Federal law, guidance, and standards and DOT policies pertaining to its protection. Contractor shall notify DOT in writing immediately upon the discovery that Contractor is no longer in compliance with DOT data protection standards with respect to any PII.

(b) *Unanticipated threats.* If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(c) *Privacy Act.* The Contractor will—

(1) Comply with the Privacy Act of 1974, 5 U.S.C. 552a, DOT implementing regulations (49 CFR part 10), and DOT policies issued under the Act in the design, development, and/or operation of any system of records on individuals to accomplish a DOT function when the contract specifically identifies the work that the Contractor is to perform.

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, and/or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this paragraph (c), in all subcontracts awarded under this contract which requires the design, development, and/or operation of such a system of records.

(d) *Privacy Act records.* The Contractor shall not release records subject to the Privacy Act except by the direction of the DOT, regardless of whether DOT or the Contractor maintains the records.

(e) *Confidentiality agreement.* Contractor agrees to execute a confidentiality agreement protecting PII, when necessary, and further agrees not to appropriate such PII for its own use or to disclose such information to third parties unless specifically authorized by DOT in writing.

(f) *Surrender of records.* If at any time during the term of the Contract any part of

PII, in any form, that Contractor obtains from or on behalf of DOT ceases to be required by Contractor for the performance of its obligations under the Contract, or upon termination of the Contract, whichever occurs first, Contractor shall, within ten (10) business days, notify DOT and securely return such PII to DOT, or, at DOT’s written request destroy, un-install and/or remove all copies of such PII in Contractor’s possession or control, or such part of the PII which relates to the part of the Contract which is terminated, or the part no longer required, as appropriate, and certify to DOT that the requested action has been completed.

(g) *NIST FIPS 140–2.* At a minimum, the Contractor shall protect all PII created, collected, used, maintained, or disseminated on behalf of the Department using controls consistent with Federal Information Processing Standard Publication 199 (FIPS 199) moderate confidentiality standards, unless otherwise authorized by the DOT Chief Privacy Officer.

(h) *Protection of sensitive information.* The Contractor shall comply with Government and DOT guidance for protecting PII.

(i) *Breach.* The Contractor shall bear all costs, losses, and damages resulting from the Contractor’s breach of these clauses. Contractor agrees to release, defend, indemnify, and hold harmless DOT for claims, losses, penalties, and damages and costs to the extent arising out of Contractor’s, or its subcontractor’s, negligence, unauthorized use or disclosure of PII and/or Contractor’s, or its subcontractor’s, breach of its obligations under these clauses.

(j) *Breach reporting.* Contractors shall report breaches involving PII directly to DOT at (202) 385–4357 or 1–(866)–466–5221 within two (2) hours of discovery. Contractor shall provide the incident number automatically assigned by DOT for all breaches reported by the Contractor or any subcontractors to the Contracting Officer.

(k) *Applicability.* Contractor shall inform all principals, officers, employees, agents and subcontractors engaged in the performance of this contract of the obligations contained in these clauses.

(l) *Training.* To the extent necessary and/or required by law, the Contractor shall provide training to employees, agents, and subcontractors to promote compliance with these clauses. The Contractor is liable for any breach of these clauses by any of its principals, officers, employees, agents, and subcontractors.

(m) *Subcontractor engagement.* When the Contractor engages a subcontractor in connection with its performance under the contract, and the Contractor provides such subcontractor access to PII, the Contractor shall provide the Contracting Officer with prompt notice of the identity of the subcontractor and the extent of the role that the subcontractor will play in connection with the performance of the contract. This obligation is in addition to any limitations of subcontracting and consent to subcontract requirements identified elsewhere in the clauses and provisions of this contract.

(n) *Subcontract flowdown requirements.* Contractors shall flow down this clause to all subcontracts and purchase orders or other

agreements and require that subcontractors incorporate this clause in their subcontracts, appropriately modified for identification of the parties. The Contractor shall enforce the terms of the clause, including action against its subcontractors, their employees and associates, or third-parties, for noncompliance. All subcontractors given access to any PII must agree to—

(1) Abide by the clauses set forth herein, including, without limitation, provisions relating to compliance with data privacy standards for the Protection of Data about Individuals, Breach Notification Controls, and Notice of Security and/or Privacy Incident;

(2) Restrict use of PII only for subcontractor's internal business purposes and only as necessary to render services to Contractor in connection with Contractor's performance of its obligations under the contract;

(3) Certify in writing, upon completion of services provided by a subcontractor, that the subcontractor has returned to the Contractor all records containing PII within 30 days of subcontractor's completion of services to Contractor. Failure of subcontractor to return all records containing PII within this period will be reported to DOT as a privacy incident; and

(4) Report breaches involving PII directly to DOT at (202) 385-4357 or 1-(866)-466-5221 within two (2) hours of discovery. Subcontractors shall provide the incident report number automatically assigned by DOT to the prime contractor. Lower-tier subcontractors, likewise, shall report the incident report number automatically assigned by DOT to their higher-tier subcontractor until the prime contractor is reached. Contractor shall provide the DOT incident number to the Contracting Officer.

(End of clause)

#### 1252.239-76 Cloud Computing Services.

As prescribed in 1239.7204(a), insert the following clause:

##### Cloud Computing Services (NOV 2022)

(a) *Definitions.* As used in this clause—  
*Authorizing official*, as described in Appendix B of DOT Order 1350.37, Departmental Cybersecurity Policy, means the senior Federal official or executive with the responsibility for operating an information system at an acceptable level of risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation.

*Cloud computing* means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. This includes other commercial terms, such as on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured service. It also includes commercial offerings for software-as-a-service, infrastructure-as-a-service, and platform-as-a-service.

*Compromise* means disclosure of information to unauthorized persons, or a violation of the security policy of a system, whereby without authorization information is disclosed, modified, destroyed, lost, or copied to unauthorized media—whether intentionally or unintentionally.

*Cyber incident* means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

*Government data* means any information, document, media, or material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

*Government-related data* means any information, document, media, or material regardless of physical form or characteristics that is created or obtained by a Contractor through the storage, processing, or communication of Government data. This does not include contractor's business records e.g., financial records, legal records etc. or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

*Media* means physical devices or writing surfaces including, but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

*Spillage security incident* means an incident that results in the transfer of classified information onto an information system not accredited (i.e., authorized) for the appropriate security level.

(b) *Cloud computing security requirements.* The requirements of this clause are applicable when using cloud computing to provide information technology services in the performance of the contract.

(1) If the Contractor indicated in its offer that it does not anticipate the use of cloud computing services in the performance of a resultant contract, and after the award of this contract, the Contractor proposes to use cloud computing services in the performance of the contract, the Contractor shall obtain approval from the Contracting Officer prior to utilizing cloud computing services in performance of the contract.

(2) The Contractor shall implement and maintain administrative, technical, and physical safeguards and controls with the security level and services required in accordance with the DOT Order 1351.37, Departmental Cybersecurity Policy, and the requirements of DOT Order 1351.18, Departmental Privacy Risk Management Policy (the versions of each that in effect at the time the solicitation is issued or as authorized by the Contracting Officer), unless notified by the Contracting Officer that this requirement has been waived by the DOT Chief Information Officer.

(3) The Contractor shall maintain all Government data not physically located on

DOT premises within the United States, the District of Columbia, and all territories and possessions of the United States, unless the Contractor receives written notification from the Contracting Officer to use another location, in accordance with DOT Policy.

(4) DOT will determine the security classification level for the cloud system in accordance with Federal Information Processing Standard 199; the Contractor will then apply the appropriate set of impact baseline controls as required in the FedRAMP Cloud Computing Security Requirements Baseline document to ensure compliance with security standards. The FedRAMP baseline controls are based on NIST Special Publication 800-53, Revision 5, Security and Privacy Controls for Information Systems and Organizations, Security Control Baselines and also includes a set of additional controls for use within systems providing cloud services to the Federal government.

(5) The Contractor shall maintain a security management continuous monitoring environment that meets or exceeds the requirements in the Reporting and Continuous Monitoring section of this contract/task order \_\_\_\_\_. [Fill-in: Contracting Officer enter the requirements document paragraph reference number] based upon the latest edition of FedRAMP Cloud Computing Security Requirements Baseline and FedRAMP Continuous Monitoring Requirements.

(6) The Contractor shall be responsible for the following privacy and security safeguards:

(i) To the extent required to carry out the FedRAMP assessment and authorization process and FedRAMP continuous monitoring, to safeguard against threats and hazards to the security, integrity, and confidentiality of any non-public Government data collected and stored by the Contractor, the Contractor shall provide the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(ii) The Contractor shall also comply with any additional FedRAMP and DOT Orders containing cybersecurity and privacy policies.

(7) The Government may perform manual or automated audits, scans, reviews, or other inspections of the vendor's IT environment being used to provide or facilitate services for the Government. In accordance with the Federal Acquisition Regulation (FAR) clause 52.239-1, Privacy or Security Safeguards, the Contractor shall provide the Government access to Contractor's facilities, installations, technical capabilities, operations, documentation, records and databases to carry out a program of inspection. Contractors shall provide access within two hours of notification by the Government. The program of inspection shall include, but is not limited to—

(i) Authenticated and unauthenticated operating system/network vulnerability scans;

(ii) Authenticated and unauthenticated web application vulnerability scans;

(iii) Authenticated and unauthenticated database application vulnerability scans; and

(8) Automated scans can be performed by Government personnel, or agents acting on behalf of the Government, using Government operated equipment, and Government specified tools.

(9) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(10) If the vendor chooses to run its own automated scans or audits, results from these scans may, at the Government's discretion, be accepted in lieu of Government performed vulnerability scans. In these cases, the Government will approve scanning tools and their configuration. In addition, the Contractor shall provide complete results of vendor-conducted scans to the Government.

(c) *Limitations on access to and use and disclosure of Government data and Government-related data.*

(1) The Contractor shall not access, use, or disclose Government data unless specifically authorized by the terms of this contract or a task order or delivery order issued hereunder.

(i) If authorized by the terms of this contract or a task order or delivery order issued hereunder, any access to, or use or disclosure of, Government data shall only be for purposes specified in this contract or task order or delivery order.

(ii) The Contractor shall ensure that its employees are subject to all such access, use, and disclosure prohibitions and obligations.

(iii) These access, use, and disclosure prohibitions and obligations shall survive the expiration or termination of this contract.

(2) The Contractor shall use Government-related data only to manage the operational environment that supports the Government data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer.

(d) *Cloud computing services cyber incident reporting.* The Contractor shall report all cyber incidents related to the cloud computing service provided under this contract, to DOT via the DOT Security Operations Center (SOC) 24 hours-a-day, 7 days-a-week, 365 days a year (24x7x365) at phone number: 571-209-3080 (Toll Free: 866-580-1852) within 2 hours of discovery.

(e) *Spillage.* Upon notification by the Government of a spillage, or upon the Contractor's discovery of a spillage, the Contractor shall cooperate with the Contracting Officer to address the spillage in compliance with agency procedures.

(f) *Malicious software.* The Contractor or subcontractor(s) that discovers and isolates malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(g) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in the cyber incident report (see paragraphs (b)(5) and (d) of this clause) and all relevant monitoring/packet capture data for at least 90 days from

the submission of the cyber incident report to allow DOT to request the media or decline interest.

(h) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DOT, the Contractor shall provide DOT with access to additional information or equipment that is necessary to conduct a forensic analysis.

(i) *Cyber incident damage assessment activities.* If DOT elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (b)(7) of this clause.

(j) *Subcontract flowdown requirement.* The Contractor shall include this clause, including this paragraph (j), in all subcontracts that involve or may involve cloud services, including subcontracts for commercial products or commercial services.

(End of clause)

#### 1252.239-77 Data Jurisdiction.

As prescribed in 1239.7204(b), insert a clause substantially as follows:

##### Data Jurisdiction (NOV 2022)

The Contractor shall identify all data centers in which the data at rest or data backup will reside, including primary and replicated storage. The Contractor shall ensure that all data centers not physically located on DOT premises reside within the United States, the District of Columbia, and all territories and possessions of the United States, unless otherwise authorized by the DOT CIO. The Contractor shall provide a Wide Area Network (WAN), with a minimum of \_\_\_\_\_ [Contracting Officer fill-in: Insert specific number] data center facilities at \_\_\_\_\_ [Contracting Officer fill-in number] different geographic locations with at least \_\_\_\_\_ [Contracting Officer fill-in number] internet Exchange Point (IXP) for each price offering. The Contractor shall provide internet bandwidth at the minimum of \_\_\_\_\_ [Contracting Officer fill-in applicable gigabytes] GB.

(End of clause)

#### 1252.239-78 Validated Cryptography for Secure Communications.

As prescribed in 1239.7204(c), insert a clause substantially as follows:

##### Validated Cryptography for Secure Communications (NOV 2022)

(a) The Contractor shall use only cryptographic mechanisms that comply with \_\_\_\_\_ [Contracting Officer insert FIPS 140-2 level #]. All deliverables shall be labeled \_\_\_\_\_ [Contracting Officer insert appropriate label such as "For Official Use Only" (FOUO) or other DOT-agency selected designation per document sensitivity].

(b) External transmission/dissemination of \_\_\_\_\_ [Contracting Officer fill-in: e.g., labeled deliverables] to or from a Government computer must be encrypted. Certified encryption modules must be used in accordance with \_\_\_\_\_ [Contracting Officer shall insert the standard, such as

FIPS PUB 140-2, "Security requirements for Cryptographic Modules."

(End of clause)

#### 1252.239-79 Authentication, Data Integrity, and Non-Repudiation.

As prescribed in 1239.7204(d), insert a clause substantially as follows:

##### Authentication, Data Integrity, and Non-Repudiation (NOV 2022)

The Contractor shall provide a [Fill-in: Contracting Officer fill-in the "cloud service" name] system that implements \_\_\_\_\_ [Contracting Officer insert the required level (1-4) of FIPS 140-2 encryption standard] that provides for origin authentication, data integrity, and signer non-repudiation.

(End of clause)

#### 1252.239-80 Audit Record Retention for Cloud Service Providers.

As prescribed in 1239.7204(e), insert the following clause:

##### Audit Record Retention for Cloud Service Providers (NOV 2022)

(a) The Contractor shall support a system in accordance with the requirement for Federal agencies to manage their electronic records in accordance with 36 CFR 1236.20 and 1236.22, including but not limited to capabilities such as those identified in DoD STD-5015.2 V3, Electronic Records Management Software Applications Design Criteria Standard, NARA Bulletin 2008-05, July 31, 2008, Guidance concerning the use of email archiving applications to store email, and NARA Bulletin 2010-05 September 08, 2010, Guidance on Managing Records in Cloud Computing Environments.

(b) The Contractor shall maintain records to retain functionality and integrity throughout the records' full lifecycle including—

(1) Maintenance of links between records and metadata; and

(2) Categorization of records to manage retention and disposal, either through transfer of permanent records to NARA or deletion of temporary records in accordance with NARA approved retention schedules.

(End of clause)

#### 1252.239-81 Cloud Identification and Authentication (Organizational Users) Multi-Factor Authentication.

As prescribed in 1239.7204(f), insert the following clause:

##### Cloud Identification and Authentication (Organizational Users) Multi-Factor Authentication (NOV 2022)

The Contractor shall support a secure, multi-factor method of remote authentication and authorization to identified Government Administrators that will allow Government-designated personnel the ability to perform management duties on the system. The Contractor shall support multi-factor authentication in accordance with National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS) Publication (PUB) Number 201-2,

Personal Identity Verification (PIV) of Federal Employees and Contractors, and OMB implementation guidance for personal identity verification.

(End of clause)

**1252.239–82 Identification and Authentication (Non-Organizational Users).**

As prescribed in 1239.7204(g), insert the following clause:

**Identification and Authentication (Non-Organizational Users) (NOV 2022)**

The Contractor shall support a secure, multi-factor method of remote authentication and authorization to identified Contractor Administrators that will allow Contractor designated personnel the ability to perform management duties on the system as required by the contract.

(End of clause)

**1252.239–83 Incident Reporting Timeframes.**

As prescribed in 1239.7204(h), insert the following clause:

**Incident Reporting Timeframes (NOV 2022)**

(a) The Contractor shall report all computer security incidents to the DOT Security Operations Center (SOC) in accordance with Subpart 1239.70—Information Security and Incident Response Reporting.

(b) Contractors and subcontractors are required to report cyber incidents directly to DOT via the DOT SOC 24 hours-a-day, 7 days-a-week, 365 days a year (24x7x365) at phone number: 571–209–3080 (Toll Free: 866–580–1852) within 2 hours of discovery, regardless of the incident category. See 1252.239–74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting.

(End of clause)

**1252.239–84 Media Transport.**

As prescribed in 1239.7204(i), insert a clause substantially as follows:

**Media Transport (NOV 2022)**

(a) The Contractor shall document activities associated with the transport of DOT information stored on digital and non-digital media and employ cryptographic mechanisms to protect the confidentiality and integrity of this information during transport outside of controlled areas. This applies to—

(1) Digital media containing DOT or other Federal agency or other sensitive or third-party provided information that requires protection must be encrypted using FIPS 140–2 [Contracting Officer insert required encryption mode, based on FIPS 199 risk category] when transported outside of controlled areas; and

(2) Nondigital media must be secured using the same policies and procedures as paper.

(b) Contractors shall ensure accountability for media containing DOT or other Federal agency or other sensitive or third-party provided information that is transported outside of controlled areas. This can be accomplished through appropriate actions such as logging and a documented chain of custody form.

(c) DOT or other Federal agency sensitive or third-party provided information that resides on mobile/portable devices (e.g., USB flash drives, external hard drives, and SD cards) must be encrypted using FIPS 140–2 [Contracting Officer insert the required encryption mode based on FIPS 199 risk category]. All Federal agency data residing on laptop computing devices must be protected with NIST-approved encryption software.

(End of clause)

**1252.239–85 Personnel Screening—Background Investigations.**

As prescribed in 1239.7204(j), insert the clause as follows:

**Personnel Screening—Background Investigations (NOV 2022)**

(a) Contractors shall provide support personnel who are U.S. persons maintaining a NACI clearance or greater in accordance with OMB memorandum M–05–24, Section C (see [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/memoranda/2005/m05-24.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2005/m05-24.pdf)).

(b) The Contractor shall furnish documentation reflecting favorable adjudication of background investigations for all personnel supporting the system. The Contractor shall also comply with Executive Order 12968, Access to Classified Information. DOT separates the risk levels for personnel working on Federal computer systems into three categories: low risk, moderate risk, and high risk. The Contractor is responsible for the cost of meeting all security requirements and maintaining assessment and authorization.

(c) The Contractor's employees with access to DOT systems containing sensitive information may be required to obtain security clearances (i.e., Confidential, Secret, or Top Secret). National Security work designated "special sensitive," "critical sensitive," or "non-critical sensitive," will determine the level of clearance required for contractor employees. Personnel security clearances for national security contracts in DOT will be processed according to the Department of Defense National Industrial Security Program Operating Manual (NISPOM).

(d) The Contracting Officer, through the Contracting Officer's Representative (COR) or Program Manager will ensure that all required information is forwarded to the Federal Protective Service (FPS) in accordance with the DOT Policy. FPS will then contact each Applicant with instructions for completing required forms and releases for the type of personnel investigation requested.

(e) Applicants will not be reinvestigated if a prior favorable adjudication is on file with FPS, OPM or DoD, there has been no break in service, and the position is identified at the same or lower risk level. Once a favorable FBI Criminal History Check (Fingerprint Check) has been returned, Applicants may receive a DOT identity credential (if required) and initial access to information systems holding DOT information.

(End of clause)

**1252.239–86 Boundary Protection—Trusted Internet Connections.**

As prescribed in 1239.7204(k), insert the clause as follows:

**Boundary Protection—Trusted Internet Connections (NOV 2022)**

The Contractor shall ensure that Federal information, other than non-sensitive information, being transmitted from Federal government entities to external entities using cloud services is inspected by Trusted internet Connections (TIC) processes or the Contractor shall route all external connections through a Trusted internet Connection (TIC).

(End of clause)

**1252.239–87 Protection of Information at Rest.**

As prescribed in 1239.7204(l), insert the clause as follows:

**Protection of Information at Rest and in Transit (NOV 2022)**

The Contractor shall provide security mechanisms for handling data at rest and in transit in accordance with FIPS 140–2 [Contracting officer insert encryption standard, based on NIST FIPS 199 categorization].

(End of clause)

**1252.239–88 Security Alerts, Advisories, and Directives.**

As prescribed in 1239.7204(m), insert the clause as follows:

**Security Alerts, Advisories, and Directives (NOV 2022)**

The Contractor shall provide a list of its personnel, identified by name and role, who are assigned system administration, monitoring, and/or security responsibilities and who are designated to receive security alerts, advisories, and directives and individuals responsible for the implementation of remedial actions associated with them.

(End of clause)

**1252.239–89 Technology Modernization.**

As prescribed in 1239.7303(a), insert the following clause:

**Technology Modernization (NOV 2022)**

(a) *Modernization approach.* After issuance of the contract, the Government may solicit, and the Contractor is encouraged to propose independently, a modernization approach to the hardware, software, specifications, or other requirements of the contract. This modernization approach may be proposed to increase efficiencies (both system and process level), reduce costs, or strengthen the cyber security posture, or for any other purpose which presents an advantage to the Government. Furthermore, the modernization approach should, to the maximum extent practicable, align with how the commercial sector would solve the problem.

(b) *Proposal requirements.* As part of the proposed changes, the Contractor shall submit a price or cost proposal to the Contracting Officer for evaluation. Those proposed modernized improvements that are acceptable to the Government will be processed as modifications to the contract. At a minimum, the Contractor shall submit the following information with each proposal:

(1) A summary of how the modernized proposal aligns with the commercial sector approach and how the current approach is out of alignment/differs;

(2) A description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each;

(3) Itemized requirements of the contract that must be changed if the proposal is adopted and the proposed revision to the contract for each such change;

(4) An estimate of the changes in performance and price or cost, if any, that will result from adoption of the proposal;

(5) An evaluation of the effects the proposed changes would have on collateral costs to the Government, such as Government-furnished property costs, costs of related items, and costs of maintenance, operation and conversion (including Government application software);

(6) A statement of the schedule for contract modification adopting the proposal that maximizes benefits of the changes during the remainder of the contract, including supporting rationale; and

(7) Identification of impacts on contract cost and schedule. The Government is not liable for proposal preparation costs or for any delay in acting upon any proposal submitted pursuant to this clause.

(c) *Withdrawal.* The Contractor has a right to withdraw, in whole or in part, any proposal not adopted by contract modification within the period specified in the proposal. The decision of the Contracting Officer whether to accept any such proposal under this contract is final and not subject to the "Disputes" clause of this contract.

(d) *Product testing.* If the Government wishes to test and evaluate any item(s) proposed, the Contracting Officer will issue written directions to the Contractor specifying what item(s) will be tested, where and when the item(s) will be tested, to whom the item(s) is to be delivered, and the number of days (not to exceed 90 calendar days) that the item will be tested.

(e) *Contract modification.* The Contracting Officer may accept any proposal submitted pursuant to this clause by giving the Contractor written notice thereof. This written notice will be given by issuance of a modification to the contract. Until the Government issues a modification incorporating a proposal under this contract, the Contractor shall remain obligated to perform in accordance with the requirements, terms, and conditions of the existing contract.

(f) *Change orders.* If a proposal submitted pursuant to this clause is accepted and applied to this contract, the equitable adjustment increasing or decreasing the price or cost-plus-fixed-fee (CPFF) shall be in accordance with the procedures of the

applicable "Changes" clause incorporated by reference in the contract. The resulting contract modification will state that it is made pursuant to this clause.

(End of clause)

#### **1252.239–90 Technology Upgrades/Refreshment.**

As prescribed in 1239.7303(b), insert the following clause:

##### **Technology Upgrades/Refreshment (NOV 2022)**

(a) *Upgrade/refreshment approach.* After issuance of the contract, the Government may solicit, and the Contractor is encouraged to propose independently, technology improvements to the hardware, software, specifications, or other requirements of the contract. These improvements may be proposed to save money, to improve performance, to save energy, to satisfy increased data processing requirements, or for any other purpose that presents a technological advantage to the Government. As part of the proposed changes, the Contractor shall submit a price or cost proposal to the Contracting Officer for evaluation. Those proposed technology improvements that are acceptable to the Government will be processed as modifications to the contract. As a minimum, the following information shall be submitted by the Contractor with each proposal:

(1) A description of the difference between the existing contract requirement and the proposed change, and the comparative advantages and disadvantages of each;

(2) Itemized requirements of the contract that must be changed if the proposal is adopted, and the proposed revision to the contract for each such change;

(3) An estimate of the changes in performance and price or cost, if any, that will result from adoption of the proposal;

(4) An evaluation of the effects the proposed changes would have on collateral costs to the Government, such as Government-furnished property costs, costs of related items, and costs of maintenance, operation and conversion (including Government application software);

(5) A statement of the time by which the contract modification adopting the proposal must be issued so as to obtain the maximum benefits of the changes during the remainder of the contract including supporting rationale; and

(6) Identification of any impacts to contract completion time or delivery schedule. The Government is not liable for proposal preparation costs or for any delay in acting upon any proposal submitted pursuant to this clause. The Contractor has a right to withdraw, in whole or in part, any proposal not adopted by contract modification within the period specified in the proposal. The decision of the Contracting Officer whether to accept any such proposal under this contract is final and not subject to the "Disputes" clause of this contract.

(b) *Test and evaluation.* If the Government wishes to test and evaluate any item(s) proposed, the Contracting Officer will issue written directions to the Contractor

specifying what item(s) will be tested, where and when the item(s) will be tested, to whom the item(s) is to be delivered, and the number of days (not to exceed 90 calendar days) that the item will be tested. The Contracting Officer may accept any proposal submitted pursuant to this clause by giving the Contractor written notice thereof. This written notice will be given by issuance of a modification to the contract. Unless and until a modification is executed to incorporate a proposal under this contract, the Contractor shall remain obligated to perform in accordance with the requirements, terms and conditions of the existing contract. If a proposal submitted pursuant to this clause is accepted and applied to this contract, the equitable adjustment increasing or decreasing the price or CPFF shall be in accordance with the procedures of the applicable "Changes" clause incorporated by reference in Section I of the contract. The resulting contract modification will state that it is made pursuant to this clause.

(End of clause)

#### **1252.239–91 Records Management.**

As prescribed in 1239.7403, insert the following clause:

##### **Records Management (NOV 2022)**

(a) *Definition.*

*Federal record*, as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. The term Federal record:

(1) Includes all DOT records.

(2) Does not include personal materials.

(3) Applies to records created, received, or maintained by Contractors pursuant to a DOT contract.

(4) May include deliverables and documentation associated with deliverables.

(b) *Requirements.* (1) *Compliance.* Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to 44 U.S.C. chapters 21, 29, 31, and 33, NARA regulations at 36 CFR chapter XII, subchapter B, and those policies associated with the safeguarding of records covered by Privacy Act of 1974 (5 U.S.C. 552a). These policies include the preservation of all records, regardless of form or characteristics, mode of transmission, or state of completion.

(2) *Applicability.* In accordance with 36 CFR 1222.32, all data created for Government use and delivered to, or falling under, the legal control of the Government, are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Such Federal

records shall be managed and scheduled for disposition only as permitted by the Federal Records Act, other relevant statutes or regulations, and DOT Order 1351.28, Departmental Records Management Policy.

(3) *Records maintenance.* While DOT records are in the Contractor's custody, the Contractor is responsible for preventing the alienation or unauthorized destruction of DOT records, including all forms of mutilation. Records may not be removed from the legal custody of DOT or destroyed except in accordance with the provisions of the agency records schedules and with the written concurrence of the DOT or Component Records Officer, as appropriate. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, the Contractor must report the event to the Contracting Officer in accordance with 36 CFR part 1230, Unlawful or Accidental Removal, Defacing, Alteration, or Destruction of Records, for reporting to NARA.

(4) *Unauthorized disclosure.* The Contractor shall notify the Contracting Officer within two hours of discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records or equipment. Disclosure of non-public information is limited to authorized personnel with a need-to-know as described in the contract. The Contractor shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of this information, data, documentary material, records and/or equipment. The Contractor shall not remove material from Government facilities or systems, or facilities or systems operated or maintained on the Government's behalf, without the express written permission of the Contracting Officer. When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to DOT control or the Contractor must hold it until otherwise directed. Items returned to the Government shall be hand carried, mailed, emailed, or securely electronically transmitted to the Contracting Officer or address prescribed in the contract. Destruction of records is expressly prohibited unless in accordance with the contract.

(c) *Non-public information.* The Contractor shall not create or maintain any records containing any non-public DOT information that are not specifically authorized by the contract.

(d) *Rights in data.* Rights in data under this contract are set forth in clauses prescribed by FAR part 27 and included in this contract, (e.g., 52.227-14 Rights in Data—General). The Contractor must make any assertion of copyright in the data or other deliverables under this contract and substantiate such assertions. The Contractor must add or correct all limited rights, restricted rights, or copyright notices and take all other appropriate actions in accordance with the terms of this contract and the clauses included herein.

(e) *Notification of third-party access requests.* The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Federal records, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency. The Contractor shall cooperate with the Contracting Officer to take all measures to protect Federal records, from any unauthorized disclosure.

(f) *Training.* All Contractor employees assigned to this contract who create, work with, or otherwise handle records are required to take DOT-provided records management training. The Contractor is responsible for confirming to the Contracting Officer that training, including initial training and any annual or refresher training, has been completed in accordance with agency policies.

(g) *Subcontract flowdown requirements.* (1) The Contractor shall incorporate the substance of this clause, its terms and requirements including this paragraph (g), in all subcontracts under this contract, and require written subcontractor acknowledgment of same.

(2) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of clause)

**1252.239-92 Information and Communication Technology Accessibility Notice.**

As prescribed in 1239.203-70(a), insert the following provision:

**Information and Communication Technology Accessibility Notice (NOV 2022)**

(a) Any offeror responding to this solicitation must comply with established DOT Information and Communication Technology (ICT) (formerly known as Electronic and Information (EIT)) accessibility standards. Information about Section 508 is available at <https://www.section508.gov/>.

(b) The Section 508 accessibility standards applicable to this solicitation are stated in the clause at 1252.239-81, Information and Communication Technology Accessibility. In order to facilitate the Government's determination whether proposed ICT supplies and services meet applicable Section 508 accessibility standards, offerors must submit appropriate Section 508 Checklists, in accordance with the checklist completion instructions. The purpose of the checklists is to assist DOT acquisition and program officials in determining whether proposed ICT supplies or information, documentation and services support conform to applicable Section 508 accessibility standards. The checklists allow offerors or developers to self-evaluate their supplies and document—in detail—whether they conform to a specific Section 508 accessibility standard, and any underway remediation efforts addressing conformance issues.

(c) Respondents to this solicitation must identify any exception to Section 508 requirements. If an offeror claims its supplies or services meet applicable Section 508

accessibility standards, and it is later determined by the Government, *i.e.*, after award of a contract or order, that supplies or services delivered do not conform to the described accessibility standards, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its expense.

(End of provision)

**1252.239-93 Information and Communication Technology Accessibility.**

As prescribed in 1239.203-70(b), insert the following clause:

**Information and Communication Technology Accessibility (NOV 2022)**

(a) All Information and Communication Technology (ICT) supplies, information, documentation and services support developed, acquired, maintained or delivered under this contract or order must comply with the Information and Communication Technology (ICT) Standards and Guidelines (*see* 36 CFR parts 1193 and 1194). Information about Section 508 is available at <https://www.section508.gov/>.

(b) The Section 508 accessibility standards applicable to this contract or order are identified in the Specification, Statement of Work, or Performance Work Statement. If it is determined by the Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(c) The Section 508 accessibility standards applicable to this contract are: \_\_\_\_\_ [*Contracting Officer inserts the applicable Section 508 accessibility standards*].

(d) In the event of a modification(s) to this contract or order, which adds new ICT supplies or services or revises the type of, or specifications for, supplies or services, the Contracting Officer may require that the Contractor submit a completed Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If the Government determines that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the contract, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(e) If this is an indefinite-delivery type contract, a Blanket Purchase Agreement or a Basic Ordering Agreement, the task/delivery order requests that include ICT supplies or services will define the specifications and accessibility standards for the order. In those cases, the Contractor may be required to provide a completed Section 508 Checklist and any other additional information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards. If it is determined by the

Government that ICT supplies and services provided by the Contractor do not conform to the described accessibility standards in the provided documentation, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(End of clause)

**1252.242–70 Dissemination of Information—Educational Institutions.**

As prescribed in 1242.270(a), insert the following clause:

**Dissemination of Information—Educational Institutions (NOV 2022)**

(a) The Department of Transportation (DOT) desires widespread dissemination of the results of funded transportation research. The Contractor, therefore, may publish (subject to the provisions of the “Data Rights” and “Patent Rights” clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause must contain acknowledgment of DOT’s sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DOT. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, two copies of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Press releases concerning the results or conclusions from the research under this contract shall not be made or otherwise distributed to the public without prior written approval of the Contracting Officer.

(d) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

**1252.242–71 Contractor Testimony.**

As prescribed in 1242.270(b), insert the following clause:

**Contractor Testimony (NOV 2022)**

All requests for the testimony of the Contractor or its employees, and any intention to testify as an expert witness relating to: (a) any work required by, and/or performed under, this contract; or (b) any information provided by any party to assist the Contractor in the performance of this contract, shall be immediately reported to the

Contracting Officer. Neither the Contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved, in advance, by the Contracting Officer or required by a judge in a final court order.

(End of clause)

**1252.242–72 Dissemination of Contract Information.**

As prescribed in 1242.270(c), insert the following clause:

**Dissemination of Contract Information (NOV 2022)**

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

**1252.242–74 Contract Audit Support.**

As prescribed in 1242.170, insert the following clause:

**Contract Audit Support (NOV 2022)**

The Government may at its sole discretion utilize certified public accountant(s) to provide contract audit services in lieu of the cognizant government audit agency to accomplish the contract administration requirements of FAR parts 32 and 42 under the terms and conditions of this contract. The audit services contractor reviewing the Contractor’s accounting systems and data will perform this function in accordance with contract provisions which prohibit disclosure of proprietary financial data or use of such data for any purpose other than to perform the required audit services. The Contractor shall provide access to accounting systems, records, and data to the audit services contractor like that provided to the cognizant government auditor.

(End of clause)

**Subpart 1252.3—Provision and Clause Matrix**

**1252.301 Solicitation provisions and contract clauses (matrix).**

The TAR matrix is not published in the CFR. It is available on the *Acquisition.gov* website at <https://www.acquisition.gov/TAR>.

**PART 1253—FORMS**

**Subpart 1253.2—Prescription of Forms Sec.**

1253.204–70 Administrative matters—agency specified forms.  
1253.227 Patents, data, and copyrights.

1253.227–3 Patent rights under Government contracts.

**Subpart 1253.3—Forms Used in Acquisitions**

1253.300–70 DOT agency forms.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 1253.2—Prescription of Forms**

**1253.204–70 Administrative matters—agency specified forms.**

The following forms are prescribed for use in the closeout of applicable contracts, as specified in 1204.804–570:

(a) *Department of Transportation (DOT) Form DOT F 4220.4, Contractor’s Release.* Form DOT F 4220.4 is authorized for local reproduction and a copy may be obtained at <https://www.transportation.gov/assistant-secretary-administration/procurement/tar-part-1253-forms>.

(b) *Form DOT F 4220.45, Contractor’s Assignment of Refunds, Rebates, Credits, and Other Amounts.* Form DOT F 4220.45 is authorized for local reproduction and a copy may be obtained at <https://www.transportation.gov/assistant-secretary-administration/procurement/tar-part-1253-forms>.

(c) *Form DOT F 4220.46, Cumulative Claim and Reconciliation Statement.* Form DOT F 4220.46 is authorized for local reproduction and a copy may be obtained at <https://www.transportation.gov/assistant-secretary-administration/procurement/tar-part-1253-forms>.

(d) *Department of Defense DD Form 882, Report of Inventions and Subcontracts.* DD Form 882 can be found at <https://www.esd.whs.mil/Directives/forms/>.

**1253.227 Patents, data, and copyrights.**

**1253.227–3 Patent rights under Government contracts.**

The following form is prescribed as a means for contractors to report inventions made during contract performance, as specified in 1227.305–4; Department of Defense DD Form 882, Report of Inventions and Subcontracts. DD Form 882 can be found at <https://www.esd.whs.mil/Directives/forms/>.

**Subpart 1253.3—Forms Used in Acquisitions**

1253.300–70 DOT agency forms.

This subpart identifies, in numerical sequence, agency forms that are specified by the TAR for use in acquisitions. See table 1 to 1253.300–70. Forms are also accessible in Adobe PDF and Microsoft Word files on the DOT Office of Senior Procurement Executive website at <https://www.transportation.gov/assistant-secretary-administration/procurement/tar-part-1253-forms>.

TABLE 1 TO 1253.300–70—FORMS USED IN DOT ACQUISITIONS

Form name	Form No.
Contractor’s Release Form .....	4220.4
Contractor’s Assignment of Refunds, Rebates, Credits, and other Amounts. ....	4220.45
Cumulative Claim and Reconciliation Statement .....	4220.46

**PARTS 1254–1299 [RESERVED]**

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