

**SUBPART 203.9—WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES**

*(Revised April 28, 2014)*

**203.900 Scope of subpart.**

This subpart applies to DoD instead of FAR subpart 3.9.

(1) This subpart implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(2) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(i) Relates to an activity or an element of the intelligence community; or

(ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

**203.901 Definitions.**

“Abuse of authority,” as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of DoD or the successful performance of a DoD contract.

**203.903 Policy.**

(1) *Prohibition.* 10 U.S.C. 2409 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (3) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(2) *Classified information.* As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

(3) *Entities to whom disclosure may be made:*

(i) A Member of Congress or a representative of a committee of Congress.

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- (ii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.
- (iii) The Government Accountability Office.
- (iv) A DoD employee responsible for contract oversight or management.
- (v) An authorized official of the Department of Justice or other law enforcement agency.
- (vi) A court or grand jury.
- (vii) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(4) *Disclosure clarified.* An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract shall be deemed to have made a disclosure.

(5) *Contracting officer actions.* A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

#### **203.904 Procedures for filing complaints.**

(1) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 203.903 may file a complaint with the Inspector General of the Department of Defense.

(2) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(3) The complaint shall be signed and shall contain—

- (i) The name of the contractor;
- (ii) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
- (iii) The violation of law, rule, or regulation giving rise to the disclosure;
- (iv) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and
- (v) The specific nature and date of the reprisal.

#### **203.905 Procedures for investigating complaints.**

(1) Unless the DoD Inspector General makes a determination that the complaint is

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frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the DoD Inspector General will investigate the complaint.

(2) If the DoD Inspector General investigates the complaint, the DoD Inspector General will—

(i) Notify the complainant, the contractor alleged to have committed the violation, and the head of the agency; and

(ii) Provide a written report of findings to the complainant, the contractor alleged to have committed the violation, and the head of the agency.

(3) Upon completion of the investigation, the DoD Inspector General—

(i) Either will determine that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and

(ii) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, as agreed to by the person submitting the complaint.

(4) The DoD Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(i) Made with the consent of the person alleging reprisal;

(ii) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(iii) Necessary to conduct an investigation of the alleged reprisal.

(5) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the DoD Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

#### **203.906 Remedies.**

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905, the head of the agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 203.903 and shall either issue an order denying relief or shall take one or more of the following actions:

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(i) Order the contractor to take affirmative action to abate the reprisal.

(ii) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 203.905(3)(ii), and there is no showing that such delay is due to the bad faith of the complainant—

(i) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant may bring a de novo action at law or equity against the contractor to seek compensatory damages and other relief available under 10 U.S.C. 2409 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(3) An Inspector General determination and an agency head order denying relief under paragraph (2) of this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to 10 U.S.C. 2409(c).

(4) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued by the head of the agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

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(6) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

**203.970 Contract clause.**

Use the clause at [252.203-7002](#), Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts.

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(Revised April 28, 2014)

#### **234.001 Definition.**

As used in this subpart—

“Acceptable earned value management system” and “earned value management system” are defined in the clause at [252.234-7002](#), Earned Value Management System.

“Production of major defense acquisition program” means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or an activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

“Significant deficiency” is defined in the clause at [252.234-7002](#), Earned Value Management System, and is synonymous with “noncompliance.”

#### **234.003 Responsibilities.**

DoDD 5000.01, The Defense Acquisition System, and DoDI 5000.02, Operation of the Defense Acquisition System, contain the DoD implementation of OMB Circular A-109 and OMB Circular A-11.

#### **234.004 Acquisition strategy.**

(1) See [209.570](#) for policy applicable to acquisition strategies that consider the use of lead system integrators.

(2) *Contract type.*

(i) In accordance with section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), for major defense acquisition programs at Milestone B—

(A) The Milestone Decision Authority shall select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(B) The basis for the contract type selection shall be documented in the acquisition strategy. The documentation—

(1) Shall include an explanation of the level of program risk; and

(2) If program risk is determined to be high, shall outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the high level of program risk; and

(C) If a cost-type contract is selected, the contract file shall include the Milestone Decision Authority’s written determination that—

(1) The program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

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(2) The complexity and technical challenge of the program is not the result of a failure to meet the requirements of 10 U.S.C. 2366a.

(ii) In accordance with section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), for contracts entered into on or after October 1, 2014, the contracting officer shall—

(A) Not use cost-reimbursement line items for the acquisition of production of major defense acquisition programs, unless USD(AT&L) submits to the congressional defense committees—

(1) A written certification that the particular cost-reimbursement line items are needed to provide a required capability in a timely and cost effective manner; and

(2) An explanation of the steps taken to ensure that cost-reimbursement line items are used only when to achieve the purposes of the exception; and

(B) Include a copy of such congressional certification in the contract file.

#### **234.005 General requirements.**

##### **234.005-1 Competition.**

(1) A contract that is initially awarded from the competitive selection of a proposal resulting from a general solicitation may contain a contract line item or contract option for the provision of advanced component development or prototype of technology developed under the contract or the delivery of initial or additional prototype items if the item or a prototype thereof is created as the result of work performed under the contract only when it adheres to the following limitations:

(i) The contract line item or contract option shall be limited to the minimal amount of initial or additional prototype items that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

(ii) The term of the contract line item or contract option shall be for not more than 12 months.

(iii) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed the lesser of—

(A) The amount that is three times the dollar value of the work previously performed under the contract; or

(B) \$20 million.

(2) A contract line item or contract option may not be exercised under this authority after September 30, 2014.

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*(Revised April 28, 2014)*

**252.232-7000 Advance Payment Pool.**

As prescribed in [232.412-70](#)(a), use the following clause:

ADVANCE PAYMENT POOL (DEC 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated \_\_\_\_\_.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (insert the name of the contractor). The Agreement is incorporated in the contract by reference.

(End of clause)

**252.232-7001 Disposition of Payments.**

As prescribed in [232.412-70](#)(b), use the following clause:

DISPOSITION OF PAYMENTS (DEC 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (insert the name of the disbursing office in the advance payment pool agreement), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

**252.232-7002 Progress Payments for Foreign Military Sales Acquisitions.**

As prescribed in [232.502-4-70](#)(a), use the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS  
(DEC 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate;  
and

(b) Submit a supporting schedule showing—



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- (1) The amount of each request distributed to each country's requirements; and
  - (2) Total price per contract line item applicable to each separate progress payment rate.
- (c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);
- (d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and
- (e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

#### **252.232-7003 Electronic Submission of Payment Requests and Receiving Reports.**

As prescribed in [232.7004\(a\)](#), use the following clause:

#### ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (JUN 2012)

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

- (1) “Contract financing payment” and “invoice payment” have the meanings given in section 32.001 of the Federal Acquisition Regulation.
- (2) “Electronic form” means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using Wide Area WorkFlow (WAWF) or another electronic form authorized by the Contracting Officer.
- (3) “Payment request” means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.
- (4) “Receiving report” means the data required by the clause at [252.246-7000](#), Material Inspection and Receiving Report.

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(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests and receiving reports using WAWF, in one of the following electronic formats that WAWF accepts: Electronic Data Interchange, Secure File Transfer Protocol, or World Wide Web input. Information regarding WAWF is available on the Internet at <https://wawf.eb.mil/>.

(c) The Contractor may submit a payment request and receiving report using other than WAWF only when—

(1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment;

(2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System);

(3) DoD makes payment for rendered health care services using the TRICARE Encounter Data System (TEDS) as the electronic format; or

(4) When the Governmentwide commercial purchase card is used as the method of payment, only submission of the receiving report in electronic form is required.

(d) The Contractor shall submit any non-electronic payment requests using the method or methods specified in Section G of the contract.

(e) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(End of clause)

#### **252.232-7004 DoD Progress Payment Rates.**

As prescribed in [232.502-4-70](#)(b), use the following clause:

#### DOD PROGRESS PAYMENT RATES (OCT 2001)

(a) If the contractor is a small business concern, the Progress Payments clause of

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this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 90 percent.

(b) If the contractor is a small disadvantaged business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 95 percent.

(End of clause)

#### **252.232-7005 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.**

As prescribed in [232.412-70\(c\)](#), use the following clause:

##### REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS--DOD PILOT MENTOR-PROTEGE PROGRAM (SEP 2001)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed

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by the cognizant contracting officer or contract auditor.

(End of clause)

#### **252.232-7006 Wide Area WorkFlow Payment Instructions.**

See DoD Class Deviation [2013-O0005](#), Wide Area WorkFlow Payment Instructions, issued on January 22, 2013. This deviation authorizes contractors performing work under contracts administered by ONR Regional Offices to use PayWeb, while it is being phased out, as an alternate method of sending submissions to Wide Area Workflow in addition to the more commonly used methods listed in DFARS 252.232-7006. This deviation remains in effect until September 30, 2014.

As prescribed in [232.7004](#)(b), use the following clause:

#### WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (MAY 2013)

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

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) *Electronic invoicing.* The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports.

(c) *WAWF access.* To access WAWF, the Contractor shall—

(1) Have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and

(2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.

(d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>

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(e) *WAWF methods of document submission.* Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions.* The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:

(1) *Document type.* The Contractor shall use the following document type(s).

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*(Contracting Officer: Insert applicable document type(s).)*

*Note: If a “Combo” document type is identified but not supportable by the Contractor’s business systems, an “Invoice” (stand-alone) and “Receiving Report” (stand-alone) document type may be used instead.)*

(2) *Inspection/acceptance location.* The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

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*(Contracting Officer: Insert inspection and acceptance locations or “Not applicable.”)*

(3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table\*

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	
Issue By DoDAAC	
Admin DoDAAC	
Inspect By DoDAAC	
Ship To Code	
Ship From Code	
Mark For Code	
Service Approver (DoDAAC)	
Service Acceptor (DoDAAC)	
Accept at Other DoDAAC	
LPO DoDAAC	
DCAA Auditor DoDAAC	

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Other DoDAAC(s)	
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(\*Contracting Officer: Insert applicable DoDAAC information or “See schedule” if multiple ship to/acceptance locations apply, or “Not applicable.”)

(4) *Payment request and supporting documentation.* The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

(5) *WAWF email notifications.* The Contractor shall enter the e-mail address identified below in the “Send Additional Email Notifications” field of WAWF once a document is submitted in the system.

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(Contracting Officer: Insert applicable email addresses or “Not applicable.”)

(g) *WAWF point of contact.*

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity’s WAWF point of contact.

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(Contracting Officer: Insert applicable information or “Not applicable.”)

(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

(End of clause)

#### **252.232-7007 Limitation of Government’s Obligation.**

As prescribed in [232.705-70](#), use the following clause:

##### LIMITATION OF GOVERNMENT’S OBLIGATION (APR 2014)

(a) Contract line item(s) *[Contracting Officer insert after negotiations]* is/are incrementally funded. For this/these item(s), the sum of \$ *[Contracting Officer insert after negotiations]* of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to

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perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment

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hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled “Disputes.”

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled “Default.” The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled “Termination for Convenience of the Government.”

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____
(month) (day), (year)	\$ _____

(End of clause)

#### **252.232-7008 Assignment of Claims (Overseas).**

As prescribed in [232.806\(a\)\(1\)](#), use the following clause:

#### ASSIGNMENT OF CLAIMS (OVERSEAS) (JUN 1997)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and



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(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

#### **252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card.**

As prescribed in [232.1110](#), use the following clause:

##### MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (DEC 2006)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below the micro-purchase threshold in Part 2 of the Federal Acquisition Regulation, under this contract or agreement.

(End of clause)

#### **252.232-7010 Levies on Contract Payments.**

As prescribed in [232.7102](#), use the following clause:

##### LEVIES ON CONTRACT PAYMENTS (DEC 2006)

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(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—

(1) The total dollar amount of the levy;

(2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

#### **252.232-7011 Payments in Support of Emergencies and Contingency Operations.**

As prescribed in [232.908](#), use the following clause:

PAYMENTS IN SUPPORT OF EMERGENCIES AND CONTINGENCY

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#### OPERATIONS (MAY 2013)

(a) Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation.

(b) Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer.

(c) *Invoice payments.*

(1) *Due date.*

(i) Payment will be made as soon as possible once a proper invoice is received and matched with the contract and the receiving/acceptance report.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice should include the items listed in paragraphs (c)(2)(i) through (c)(2)(x) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

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(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (when required). The taxpayer identification number is required for all payees subject to the U.S. Internal Revenue Code.

(ix) Electronic funds transfer banking information.

(A) The Contractor shall include electronic funds transfer banking information on the invoice only if required elsewhere in this contract.

(B) If electronic funds transfer banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct electronic funds transfer banking information in accordance with the applicable solicitation provision (e.g., FAR 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., FAR 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or FAR 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) Electronic funds transfer banking information is not required if the Government waived the requirement to pay by electronic funds transfer.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(3) *Discounts for prompt payment.* The designated payment office will take cost-effective discounts if the payment is made within the discount terms of the contract.

(4) *Contract financing payment.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

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(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment, including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact; and

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(d) This clause is applicable until otherwise notified by the Contracting Officer. Upon notification by issuance of a contract modification, the appropriate FAR Prompt Payment clause in the contract becomes applicable.

(End of clause)

#### **252.232-7012 Performance-Based Payments—Whole-Contract Basis.**

As prescribed in [232.1005-70\(a\)](#), use the following clause:

##### PERFORMANCE-BASED PAYMENTS-WHOLE-CONTRACT BASIS (MAR 2014)

(a) Performance-based payments shall form the basis for the contract financing payments provided under this contract, and shall apply to the whole contract. The performance-based payments schedule (Contract Attachment \_\_\_\_ ) describes the basis for payment, to include identification of the individual payment events, evidence of completion, and amount of payment due upon completion of each event.

(b)(i) At no time shall cumulative performance-based payments exceed cumulative contract cost incurred under this contract. To ensure compliance with this requirement, the Contractor shall, in addition to providing the information required by FAR 52.232-32, submit supporting information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:
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Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) events completed to date (1a) + (1b);		
(2) Total costs incurred to date;		
(3) Enter the amount from (1c) or (2), whichever is less;		
(4) Cumulative amount of payments previously requested; and		
(5) Payment amount requested for the current performance-based payment(s) event(s) (3) - (4).		

(ii) The Contractor shall not submit payment requests more frequently than monthly.

(iii) Incurred cost is determined by the Contractor's accounting books and records, which the contractor shall provide access to upon request of the Contracting Officer for the administration of this clause.

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(End of clause)

#### **252.232-7013 Performance-Based Payments—Deliverable-Item Basis.**

As prescribed in [232.1005-70](#)(b), use the following clause:

#### PERFORMANCE-BASED PAYMENTS-DELIVERABLE-ITEM BASIS (APR 2014)

(a) Performance-based payments shall form the basis for the contract financing payments provided under this contract and shall apply to Contract Line Item Numbers (CLIN(s)) [Contracting Officer insert applicable CLIN(s)]. The performance-based payments schedule (Contract Attachment \_\_\_\_ ) describes the basis for payment, to include identification of the individual payment events, CLINs to which each event applies, evidence of completion, and amount of payment due upon completion of each event.

(b)(i) At no time shall cumulative performance-based payments exceed cumulative contract cost incurred under CLIN(s) [Contracting Officer insert applicable CLIN(s)]. To ensure compliance with this requirement, the Contractor shall, in addition to providing the information required by FAR 52.232-32, submit supporting information for all payment requests using the following format:

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Current performance-based payment(s) event(s) addressed by this request:		
Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) event(s) completed to date (1a) + (1b);		
(2) Total costs incurred to date;		
(3) Enter the amount from (1c) or (2), whichever is less;		
(4) Cumulative amount of payments previously requested; and		
(5) Payment amount requested for the current performance-based payment(s) event(s) (3) - (4).		

(ii) The Contractor shall not submit payment requests more frequently than monthly.

(iii) Incurred cost is determined by the Contractor's accounting books and records, which the contractor shall provide access to upon request of the Contracting Officer for the administration of this clause.

(End of clause)