

*(Revised February 15, 2019)*

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**SUBPART 204.72– ANTITERRORISM AWARENESS TRAINING**  
(Added February 15, 2019)

**204.7200 Scope of subpart.**

This subpart provides policy and guidance related to antiterrorism awareness training for contractor personnel who require routine physical access to a Federally-controlled facility or military installation.

**204.7201 Definition.**

As used in this subpart—

“Military installation” means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

**204.7202 Policy.**

It is DoD policy that—

(a) Contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are required to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter; and

(b) In accordance with Department of Defense Instruction O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training may be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a qualified Level I antiterrorism awareness instructor.

**204.7203 Contract clause.**

Include the clause at [252.204-7004](#), DoD Antiterrorism Awareness Training for Contractors, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when contractor personnel require routine physical access to a Federally-controlled facility or military installation.

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## Part 206—Competition Requirements

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**SUBPART 206.1—FULL AND OPEN COMPETITION**  
*(Added February 15, 2019)*

**206.102 Use of competitive procedures.**

(d) *Other competitive procedures.*

(2) In lieu of FAR 6.102(d)(2), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in [235.016](#)(a) (10 U.S.C. 2302(2)(B)).

**SUBPART 211.1—SELECTING AND DEVELOPING REQUIREMENTS  
DOCUMENTS**

*(Revised February 15, 2019)*

**211.105 Items peculiar to one manufacturer.**

Follow the publication requirements at [PGI 211.105](#).

**211.106 Purchase descriptions for service contracts.**

Agencies shall require that purchase descriptions for service contracts and resulting requirements documents, such as statements of work or performance work statements, include language to provide a clear distinction between Government employees and contractor employees. Agencies shall be guided by the characteristics and descriptive elements of personal-services contracts at FAR 37.104. Service contracts shall require contractor employees to identify themselves as contractor personnel by introducing themselves or being introduced as contractor personnel and displaying distinguishing badges or other visible identification for meetings with Government personnel. In addition, contracts shall require contractor personnel to appropriately identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

**211.107 Solicitation provision.**

(b) To comply with section 875(c) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), use the provision at FAR 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations that include military or Government-unique specifications and standards.

**SUBPART 211.2—USING AND MAINTAINING REQUIREMENTS DOCUMENTS**

*(Revised February 15, 2019)*

**211.201 Identification and availability of specifications.**

Follow the procedures at [PGI 211.201](#) for obtaining specifications, standards, and data item descriptions from the ASSIST database, including DoD adoption notices on voluntary consensus standards.

**211.204 Solicitation provisions and contract clauses.**

(c) When contract performance requires use of specifications, standards, and data item descriptions that are not listed in the Acquisition Streamlining and Standardization Information System database, use provisions, as appropriate, substantially the same as those at—

(i) [252.211-7001](#), Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents; and

(ii) [252.211-7002](#), Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

**211.270 Reserved.**

**211.271 Elimination of use of class I ozone-depleting substances.**

See Subpart [223.8](#) for restrictions on contracting for ozone-depleting substances.

**211.272 Alternate preservation, packaging, and packing.**

Use the provision at [252.211-7004](#), Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

**211.273 Substitutions for military or Federal specifications and standards.**

**211.273-1 Definition.**

“SPI process,” as used in this section, is defined in the clause at [252.211-7005](#), Substitutions for Military or Federal Specifications and Standards.

**211.273-2 Policy.**

(a) Under the Single Process Initiative (SPI), DoD accepts SPI processes in lieu of specific military or Federal specifications or standards that specify a management or manufacturing process.

(b) DoD acceptance of an SPI process follows the decision of a Management Council, which includes representatives of the contractor, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the military departments.

(c) In procurements of previously developed items, SPI processes that previously were accepted by the Management Council shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary.

**211.273-3 Procedures.**

Follow the procedures at [PGI 211.273-3](#) for encouraging the use of SPI processes instead of military or Federal specifications and standards.

**211.273-4 Contract clause.**

Use the clause at [252.211-7005](#), Substitutions for Military or Federal Specifications and Standards, in solicitations and contracts exceeding the micro-purchase threshold, when procuring previously developed items.

**211.274 Item identification and valuation requirements.**

**211.274-1 General.**

Item unique identification and valuation is a system of marking, valuing, and tracking items delivered to DoD that enhances logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through item unique identification policy, which capitalizes on leading practices and embraces open standards, DoD—

(a) Achieves lower life-cycle cost of item management and improves life-cycle property management;

(b) Improves operational readiness;

(c) Provides reliable accountability of property and asset visibility throughout the life cycle;

(d) Reduces the burden on the workforce through increased productivity and efficiency; and

(e) Ensures item level traceability throughout lifecycle to strengthen supply chain integrity, enhance cyber security, and combat counterfeiting.

**211.274-2 Policy for item unique identification.**

(a) It is DoD policy that DoD item unique identification, or a DoD recognized unique identification equivalent, is required for all delivered items, including items of contractor-acquired property delivered on contract line items (see [PGI 245.402-71](#) for guidance when delivery of contractor acquired property is required)—

(1) For which the Government's unit acquisition cost is \$5,000 or more;

(2) For which the Government's unit acquisition cost is less than \$5,000 when the requiring activity determines that item unique identification is required for mission essential or controlled inventory items; or

(3) Regardless of value for any—

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- (i) DoD serially managed item (reparable or nonreparable) or subassembly, component, or part embedded within a subassembly, component, or part;
- (ii) Parent item (as defined in [252.211-7003\(a\)](#)) that contains the embedded subassembly, component, or part;
- (iii) Warranted serialized item;
- (iv) Item of special tooling or special test equipment, as defined at FAR 2.101, for a major defense acquisition program that is designated for preservation and storage in accordance with the requirements of section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417); and
- (v) High risk item identified by the requiring activity as vulnerable to supply chain threat, a target of cyber threats, or counterfeiting.

(b) *Exceptions.* The contractor will not be required to provide DoD item unique identification if—

(1) The items, as determined by the head of the contracting activity, are to be used to support a contingency or humanitarian or peacekeeping operation; to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack; to facilitate the provision of international disaster assistance; or to support response to an emergency or major disaster; or

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery, and the item is either acquired from a small business concern, or is a commercial item acquired under FAR part 12 or part 8.

(i) The determination and findings shall be executed by—

(A) The Component Acquisition Executive for an acquisition category (ACAT) I program; or

(B) The head of the contracting activity for all other programs.

(ii) The DoD Unique Identification Policy Office must receive a copy of the determination and findings required by paragraph (b)(2)(i) of this subsection. Follow the procedures at [PGI 211.274-2](#).

#### **211.274-3 Policy for valuation.**

(a) It is DoD policy that contractors shall be required to identify the Government's unit acquisition cost for all deliverable end items to which item unique identification applies.

(b) The Government's unit acquisition cost is—

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

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

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

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items shall not be separately identified.

#### **211.274-4 Policy for reporting of Government-furnished property.**

(a) It is DoD policy that all Government-furnished property be recorded in the DoD Item Unique Identification (IUID) Registry, as defined in the clause at [252.211-7007](#), Reporting of Government-Furnished Property.

(b) The following items are not required to be reported:

(1) Contractor-acquired property, as defined in FAR part 45.

(2) Property under any statutory leasing authority.

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

(4) Intellectual property or software.

(5) Real property.

(6) Property released as work in process.

(7) Non-serial managed items (reporting is limited to receipt transactions only).

#### **211.274-5 Policy for assignment of Government-assigned serial numbers.**

It is DoD policy that contractors apply Government-assigned serial numbers, such as tail numbers/hull numbers and equipment registration numbers, in human-readable format on major end items when required by law, regulation, or military operational necessity. The latest version of MIL-STD-130, Marking of U.S. Military Property, shall be used for the marking of human-readable information.

#### **211.274-6 Contract clauses.**

(a)(1) Use the clause at [252.211-7003](#), Item Unique Identification and Valuation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for supplies, and for services involving the furnishing of supplies, unless the conditions in [211.274-2\(b\)](#) apply.

(2) Identify in paragraph (c)(1)(ii) of the clause the contract line, subline, or exhibit line item number and description of any item(s) below \$5,000 in unit acquisition cost for which DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with [211.274-2\(a\)\(2\)](#).

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(3) Identify in paragraph (c)(1)(iii) of the clause the applicable attachment number, when DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with [211.274-2\(a\)\(3\)\(i\)](#) through (v).

(b) Use the clause at [252.211-7007](#), Reporting of Government-Furnished Property, in solicitations and contracts that contain the clause at FAR 52.245-1, Government Property.

(c) Use the clause at [252.211-7008](#), Use of Government-Assigned Serial Numbers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(1) Contain the clause at [252.211-7003](#), Item Unique Identification and Valuation; and

(2) Require the contractor to mark major end items under the terms and conditions of the contract.

#### **211.275 Passive radio frequency identification.**

##### **211.275-1 Definitions.**

“Bulk commodities,” “case,” “palletized unit load,” “passive RFID tag,” and “radio frequency identification” are defined in the clause at [252.211-7006](#), Passive Radio Frequency Identification.

##### **211.275-2 Policy.**

(a) Except as provided in paragraph (b) of this subsection, radio frequency identification (RFID), in the form of a passive RFID tag, is required for cases and palletized unit loads packaging levels and any additional consolidation level(s) deemed necessary by the requiring activity for shipments of items that—

(1) Contain items in any of the following classes of supply, as defined in DoD Manual 4140.01, Volume 6, DoD Supply Chain Materiel Management Procedures: Material Returns, Retention, and Disposition:

(i) Subclass of Class I – Packaged operational rations.

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

(iii) Class III – Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(iv) Class IV – Construction and barrier materials.

(v) Class VI – Personal demand items (non-military sales items).

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

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

(2) Will be shipped to one of the locations listed at [https://www.acq.osd.mil/log/sci/RFID\\_ship-to-locations.html](https://www.acq.osd.mil/log/sci/RFID_ship-to-locations.html) or to—

(i) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1; or

(ii) Any additional location(s) deemed necessary by the requiring activity.

(b) The following are excluded from the requirements of paragraph (a) of this subsection:

(1) Shipments of bulk commodities.

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

#### **211.275-3 Contract clause.**

Use the clause at [252.211-7006](#), Passive Radio Frequency Identification, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require shipment of items meeting the criteria at [211.275-2](#), and complete paragraph (b)(1)(ii) of the clause as appropriate.

**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES  
FOR THE ACQUISITION OF COMMERCIAL ITEMS**

*(Revised February 15, 2019)*

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

See DoD Class Deviation [2018-O0021](#), Commercial Item Omnibus Clause for Acquisitions Using the Standard Procurement System, issued October 1, 2018. This class deviation allows the contracting officer to use the SPS clause logic capability to automatically select the clauses that are applicable to the specific solicitation and contract. The contracting officer shall ensure that the deviation clause is incorporated into these solicitations and contracts because the deviation clause fulfills the statutory requirements on auditing and subcontract clauses applicable to commercial items. The deviation also authorizes adjustments to the deviation clause required by future changes to the clause at 52.212-5 that are published in the FAR. This deviation is effective for five years, or until otherwise rescinded.

(c) Include an evaluation factor regarding supply chain risk (see subpart [239.73](#)) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in [239.7301](#).

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at <https://www.acquisition.gov>, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(i) *Part 203—Improper Business Practices and Personal Conflicts of Interest.*

(A) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

(B) Use the clause at [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4](#)(a), to comply with section 847 of Pub. L. 110-181.

(C) Use the clause at [252.203-7003](#), Agency Office of the Inspector General, as prescribed in [203.1004](#)(a), to comply with section 6101 of Pub. L. 110-252 and 41 U.S.C. 3509.

(D) Use the provision at [252.203-7005](#), Representation Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4](#)(b).

(ii) *Part 204—Administrative Matters.*

(A) Use the clause at [252.204-7004](#), Antiterrorism Awareness Training for Contractors, as prescribed in [204.7203](#).

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(B) Use the provision at [252.204-7008](#) Compliance with Safeguarding Covered Defense Information Controls, as prescribed in [204.7304](#)(a).

(C) Use the clause at [252.204-7009](#), Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, as prescribed in [204.7304](#)(b).

(D) Use the clause at [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident Reporting, as prescribed in [204.7304](#)(c).

(E) Use the provision at [252.204-7013](#), Limitations on the Use or Disclosure of Information by Litigation Support Offerors, as prescribed in [204.7403](#)(a), to comply with 10 U.S.C. 129d.

(F) Use the clause at [252.204-7014](#), Limitations on the Use or Disclosure of Information by Litigation Support Contractors, as prescribed in [204.7403](#)(b), to comply with 10 U.S.C. 129d.

(G) Use the clause at [252.204-7015](#), Notice of Authorized Disclosure of Information for Litigation Support, as prescribed in [204.7403](#)(c), to comply with 10 U.S.C. 129d.

(iii) *Part 205—Publicizing Contract Actions.*

Use the clause at [252.205-7000](#), Provision of Information to Cooperative Agreement Holders, as prescribed in [205.470](#), to comply with 10 U.S.C. 2416.

(iv) *Part 211—Describing Agency Needs.*

(A) Use the clause at [252.211-7003](#), Item Unique Identification and Valuation, as prescribed in [211.274-6](#)(a)(1).

(B) Use the provision at [252.211-7006](#), Passive Radio Frequency Identification, as prescribed in [211.275-3](#).

(C) Use the clause at [252.211-7007](#), Reporting of Government-Furnished Property, as prescribed in [211.274-6](#).

(D) Use the clause at [252.211-7008](#), Use of Government-Assigned Serial Numbers, as prescribed in [211.274-6](#)(c).

(v) *Part 213—Simplified Acquisition Procedures.*

Use the provision at [252.213-7000](#), Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System—Statistical Reporting in Past Performance Evaluations, as prescribed in [213.106-2-70](#).

(vi) *Part 215—Contracting by Negotiation.*

(A) Use the provision at [252.215-7003](#), Requirements for Submission of Data Other Than Certified Cost or Pricing Data—Canadian Commercial Corporation,

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as prescribed at [215.408\(2\)\(i\)](#).

(B) Use the clause at [252.215-7004](#), Requirement for Submission of Data other Than Certified Cost or Pricing Data—Modifications—Canadian Commercial Corporation, as prescribed at [215.408\(2\)\(ii\)](#).

(C) Use the provision at [252.215-7007](#), Notice of Intent to Resolicit, as prescribed in [215.371-6](#).

(D) Use the provision [252.215-7008](#), Only One Offer, as prescribed at [215.408\(3\)](#).

(E) Use the provision [252.215-7010](#), Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, as prescribed at [215.408\(5\)\(i\)](#) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and sections 851 and 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(1) Use the basic provision as prescribed at [215.408\(5\)\(i\)\(A\)](#).

(2) Use the alternate I provision as prescribed at [215.408\(5\)\(i\)\(B\)](#).

(vii) *Part 219—Small Business Programs.*

(A) Use the clause at [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts), to comply with 15 U.S.C. 637.

(1) Use the basic clause as prescribed in [219.708\(b\)\(1\)\(A\)\(1\)](#).

(2) Use the alternate I clause-as prescribed in [219.708\(b\)\(1\)\(A\)\(2\)](#).

(B) Use the clause at [252.219-7004](#), Small Business Subcontracting Plan (Test Program), as prescribed in [219.708\(b\)\(1\)\(B\)](#), to comply with 15 U.S.C. 637 note.

(C) Use the provision at [252.219-7000](#), Advancing Small Business Growth, as prescribed in [219.309\(1\)](#), to comply with 10 U.S.C. 2419.

(D) Use the provision at [252.219-7012](#), Competition for Religious-Related Services, as prescribed in [219.270-3](#).

(viii) *Part 223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace.*  
Use the clause at [252.223-7008](#), Prohibition of Hexavalent Chromium, as prescribed in [223.7306](#).

(ix) *Part 225—Foreign Acquisition.*

(A) Use the provision at [252.225-7000](#), Buy American—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

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(1) Use the basic provision as prescribed in [225.1101](#)(1)(i).

(2) Use the alternate I provision as prescribed in [225.1101](#)(1)(ii).

(B) Use the clause at [252.225-7001](#), Buy American and Balance of Payments Program, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(1) Use the basic clause as prescribed in [225.1101](#)(2)(ii).

(2) Use the alternate I clause as prescribed in [225.1101](#)(2)(iii).

(C) Use the clause at [252.225-7006](#), Acquisition of the American Flag, as prescribed in [225.7002-3](#)(c), to comply with section 8123 of the DoD Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent DoD appropriations acts.

(D) Use the clause at [252.225-7007](#), Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, as prescribed in [225.1103](#)(4), to comply with section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Pub. L. 109-163) as amended by the NDAA for FY 2012 and FY 2017.

(E) Use the clause at [252.225-7008](#), Restriction on Acquisition of Specialty Metals, as prescribed in [225.7003-5](#)(a)(1), to comply with 10 U.S.C. 2533b.

(F) Use the clause at [252.225-7009](#), Restriction on Acquisition of Certain Articles Containing Specialty Metals, as prescribed in [225.7003-5](#)(a)(2), to comply with 10 U.S.C. 2533b.

(G) Use the provision at [252.225-7010](#), Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in [225.7003-5](#)(b), to comply with 10 U.S.C. 2533b.

(H) Use the clause at [252.225-7012](#), Preference for Certain Domestic Commodities, as prescribed in [225.7002-3](#)(a), to comply with 10 U.S.C. 2533a.

(I) Use the clause at [252.225-7015](#), Restriction on Acquisition of Hand or Measuring Tools, as prescribed in [225.7002-3](#)(b), to comply with 10 U.S.C. 2533a.

(J) Use the clause at [252.225-7016](#), Restriction on Acquisition of Ball and Roller Bearings, as prescribed in [225.7009-5](#), to comply with section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts.

(K) Use the clause at [252.225-7017](#), Photovoltaic Devices, as prescribed in [225.7017-4](#)(a), to comply with section 846 of Public Law 111-383.

(L) Use the provision at [252.225-7018](#), Photovoltaic Devices—Certificate, as prescribed in [225.7017-4](#)(b), to comply with section 846 of Public Law 111-383.

(M) Use the provision at [252.225-7020](#), Trade Agreements Certificate, to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note. Alternate I also implements

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section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic provision as prescribed in [225.1101\(5\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(5\)\(ii\)](#).

(N) Use the clause at [252.225-7021](#), Trade Agreements to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note.

(1) Use the basic clause as prescribed in [225.1101\(6\)\(i\)](#).

(2) Use the alternate II clause as prescribed in [225.1101\(6\)\(iii\)](#).

(O) Use the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, as prescribed in [225.7703-4\(a\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(P) Use the clause at [252.225-7024](#), Requirement for Products or Services from Afghanistan, as prescribed in [225.7703-4\(b\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(Q) Use the clause at [252.225-7026](#), Acquisition Restricted to Products or Services from Afghanistan, as prescribed in [225.7703-4\(c\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(R) Use the clause at [252.225-7027](#), Restriction on Contingent Fees for Foreign Military Sales, as prescribed in [225.7307\(a\)](#), to comply with 22 U.S.C. 2779.

(S) Use the clause at [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments, as prescribed in [225.7307\(b\)](#), to comply with 22 U.S.C. 2755.

(T) Use the clause at [252.225-7029](#), Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in [225.7703-4\(d\)](#).

(U) Use the provision at [252.225-7031](#), Secondary Arab Boycott of Israel, as prescribed in [225.7605](#), to comply with 10 U.S.C. 2410i.

(V) Use the provision at [252.225-7035](#), Buy American—Free Trade Agreements—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic provision as prescribed in [225.1101\(9\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(9\)\(ii\)](#).

(3) Use the alternate II provision as prescribed in [225.1101\(9\)\(iii\)](#).

(4) Use the alternate III provision as prescribed in [225.1101\(9\)\(iv\)](#).

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(5) Use the alternate IV provision as prescribed in [225.1101\(9\)\(v\)](#).

(6) Use the alternate V provision as prescribed in [225.1101\(9\)\(vi\)](#).

(W) Use the clause at [252.225-7036](#), Buy American—Free Trade Agreements—Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic clause as prescribed in [225.1101\(10\)\(i\)\(A\)](#).

(2) Use the alternate I clause as prescribed in [225.1101\(10\)\(i\)\(B\)](#).

(3) Use the alternate II clause as prescribed in [225.1101\(10\)\(i\)\(C\)](#).

(4) Use the alternate III clause as prescribed in [225.1101\(10\)\(i\)\(D\)](#).

(5) Use the alternate IV clause as prescribed in [225.1101\(10\)\(i\)\(E\)](#).

(6) Use the alternate V clause as prescribed in [225.1101\(10\)\(i\)\(F\)](#).

(X) Use the provision at [252.225-7037](#), Evaluation of Offers for Air Circuit Breakers, as prescribed in [225.7006-4\(a\)](#), to comply with 10 U.S.C. 2534(a)(3).

(Y) Use the clause at [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers, as prescribed in [225.7006-4\(b\)](#), to comply with 10 U.S.C. 2534(a)(3).

(Z) Use the clause at [252.225-7039](#), Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in [225.302-6](#), to comply with section 2 of Pub. L. 110-181, as amended.

(AA) Use the clause at [252.225-7040](#), Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, as prescribed in [225.371-5\(a\)](#).

(BB) Use the clause at [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in [225.372-2](#).

(CC) Use the provision at [252.225-7049](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, as prescribed in [225.772-5\(a\)](#), to comply with 10 U.S.C. 2279.

(DD) Use the provision at [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, as prescribed in [225.771-5](#), to comply with 10 U.S.C. 2327(b).

(EE) Use the clause at [252.225-7051](#), Prohibition on Acquisition for Certain Foreign Commercial Satellite Services, as prescribed in [225.772-5\(b\)](#), to comply with 10 U.S.C. 2279.

(x) *Part 226--Other Socioeconomic Programs.*

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Use the clause at [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, as prescribed in [226.104](#), to comply with section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts.

(xi) *Part 227—Patents, Data, and Copyrights.*

(A) Use the clause at [252.227-7013](#), Rights in Technical Data—Noncommercial Items, as prescribed in [227.7103-6\(a\)](#). Use the clause with its Alternate I as prescribed in [227.7103-6\(b\)\(1\)](#). Use the clause with its Alternate II as prescribed in [227.7103-6\(b\)\(2\)](#), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, et. seq.

(B) Use the clause at [252.227-7015](#), Technical Data—Commercial Items, as prescribed in [227.7102-4\(a\)\(1\)](#), to comply with 10 U.S.C. 2320. Use the clause with its Alternate I as prescribed in [227.7102-4\(a\)\(2\)](#), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, et. seq.

(C) Use the clause at [252.227-7037](#), Validation of Restrictive Markings on Technical Data, as prescribed in [227.7102-4\(c\)](#).

(xii) *Part 229—Taxes.*

(A) Use the clause at [252.229-7014](#), Taxes—Foreign Contracts in Afghanistan, as prescribed at [229.402-70\(k\)](#).

(B) Use the clause at [252.229-7015](#), Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement), as prescribed at [229.402-70\(l\)](#).

(xiii) *Part 232—Contract Financing.*

(A) Use the clause at [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports, as prescribed in [232.7004](#), to comply with 10 U.S.C. 2227.

(B) Use the clause at [252.232-7006](#), Wide Area WorkFlow Payment Instructions, as prescribed in [232.7004\(b\)](#).

(C) Use the clause at [252.232-7009](#), Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in [232.1110](#).

(D) Use the clause at [252.232-7010](#), Levies on Contract Payments, as prescribed in [232.7102](#).

(E) Use the clause at [252.232-7011](#), Payments in Support of Emergencies and Contingency Operations, as prescribed in [232.908](#).

(F) Use the provision at [252.232-7014](#), Notification of Payment in Local Currency (Afghanistan), as prescribed in [232.7202](#).

(xiv) *Part 237—Service Contracting.*

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(A) Use the clause at [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in [237.173-5](#), to comply with section 1038 of Pub. L. 111-84.

(B) Use the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, as prescribed in [237.171-4](#), to comply with section 1092 of Pub. L. 108-375.

(xv) *Part 239--Acquisition of Information Technology.*

(A) Use the provision [252.239-7009](#), Representation of Use of Cloud Computing, as prescribed in [239.7604](#)(a).

(B) Use the clause [252.239-7010](#), Cloud Computing Services, as prescribed in [239.7604](#)(b).

(C) Use the provision at [252.239-7017](#), Notice of Supply Chain Risk, as prescribed in [239.7306](#)(a), to comply with 10 U.S.C. 2339a.

(D) Use the clause at [252.239-7018](#), Supply Chain Risk, as prescribed in [239.7306](#)(b), to comply with 10 U.S.C. 2339a.

(xvi) *Part 243—Contract Modifications.*

Use the clause at [252.243-7002](#), Requests for Equitable Adjustment, as prescribed in [243.205-71](#), to comply with 10 U.S.C. 2410.

(xvii) *Part 244—Subcontracting Policies and Procedures.*

Use the clause at [252.244-7000](#), Subcontracts for Commercial Items, as prescribed in [244.403](#).

(xviii) *Part 246—Quality Assurance.*

(A) Use the clause at [252.246-7003](#), Notification of Potential Safety Issues, as prescribed in [246.370](#)(a).

(B) Use the clause at [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in [246.270-4](#), to comply with section 807 of Pub. L. 111-84.

(C) Use the clause at [252.246-7008](#), Sources of Electronic Parts, as prescribed in [246.870-3](#)(b), to comply with section 818(c)(3) of Pub. L. 112-81, as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291) and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(xix) *Part 247—Transportation.*

(A) Use the clause at [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in [247.207](#), to comply with section 884 of Pub. L. 110-417.

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(B) Use the provision at [252.247-7022](#), Representation of Extent of Transportation by Sea, as prescribed in [247.574\(a\)](#).

(C) Use the basic or one of the alternates of the clause at [252.247-7023](#), Transportation of Supplies by Sea, as prescribed in [247.574\(b\)](#), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(1) Use the basic clause as prescribed in [247.574\(b\)\(1\)](#).

(2) Use the alternate I clause as prescribed in [247.574\(b\)\(2\)](#).

(3) Use the alternate II clause as prescribed in [247.574\(b\)\(3\)](#).

(D) Use the clause [252.247-7025](#), Reflagging or Repair Work, as prescribed in [247.574\(c\)](#), to comply with 10 U.S.C. 2631(b).

(E) Use the provision at [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in [247.574\(d\)](#), to comply with section 1017 of Pub. L. 109-364.

(F) Use the clause at [252.247-7027](#), Riding Gang Member Requirements, as prescribed in [247.574\(f\)](#), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(G) Use the clause at [252.247-7028](#), Application for U.S. Government Shipping Documentation/Instructions, as prescribed in [247.207](#).

#### **212.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

(c) *Tailoring inconsistent with customary commercial practice.*  
The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

**SUBPART 215.3—SOURCE SELECTION**

*(Revised February 15, 2019)*

**215.300 Scope of subpart.**

Contracting officers shall follow the principles and procedures in Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled “[Department of Defense Source Selection Procedures](#),” when conducting negotiated, competitive acquisitions utilizing FAR part 15 procedures. See [PGI 215.300](#).

**215.303 Responsibilities.**

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority shall approve a source selection plan before the solicitation is issued. Follow the procedures at [PGI 215.303\(b\)\(2\)](#) for preparation of the source selection plan.

**215.304 Evaluation factors and significant subfactors.**

(c)(i) In acquisitions that require use of the clause at FAR 52.219-9, Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101-2), the extent of participation of small businesses to include service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) See [PGI 215.304\(c\)\(i\)\(A\)](#) for examples of evaluation factors.

(B) Proposals addressing the extent of small business performance shall be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219-9 and shall be structured to allow for consideration of offers from small businesses.

(C) When an evaluation assesses the extent that small businesses are specifically identified in proposals, the small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with [252.219-7003\(e\)](#).

(ii) In accordance with 10 U.S.C. 2436, consider the purchase of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs as defined in 10 U.S.C. 2430.

(iii) See [247.573-2\(c\)](#) for additional evaluation factors required in solicitations for the direct purchase of ocean transportation services.

(iv) In accordance with section 812 of the National Defense Authorization Act for Fiscal Year 2011, consider the manufacturing readiness and manufacturing-readiness processes of potential contractors and subcontractors as a part of the source selection process for major defense acquisition programs.

(v) Include an evaluation factor regarding supply chain risk (see subpart [239.73](#)) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in 239.7301. For additional guidance see PGI 215.304(c)(v).

See DoD Class Deviation [2013-O0018](#), **Past Performance Evaluation Thresholds and Reporting Requirements, issued on September 24, 2013, which updates the DoD thresholds for evaluating a contractor's past performance in source selections for competitive acquisitions. This deviation is in effect until incorporated into the DFARS or otherwise rescinded.**

**215.305 Proposal evaluation.**

(a)(2) *Past performance evaluation.*

(A) When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-8, Utilization of Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

(B) Contracting officers shall consider an offeror's failure to make a good faith effort to comply with its comprehensive subcontracting plan under the Test Program described at [219.702-70](#) as part of the evaluation of the past performance.

**215.306 Exchanges with offerors after receipt of proposals.**

(c) *Competitive range.*

(1) For acquisitions with an estimated value of \$100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306 (c) and (d).

**215.370 Evaluation factor for employing or subcontracting with members of the Selected Reserve.**

**215.370-1 Definition.**

“Selected Reserve,” as used in this section, is defined in the provision at [252.215-7005](#), Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve.

**215.370-2 Evaluation factor.**

In accordance with Section 819 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), the contracting officer may use an evaluation factor that considers whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve. See [PGI 215.370-2](#) for guidance on use of this evaluation factor.

**215.370-3 Solicitation provision and contract clause.**

(a) Use the provision at [252.215-7005](#), Evaluation Factor for Employing or Subcontracting with Members of the Selected Reserve, in solicitations that include an evaluation factor considering whether an offeror intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve.

(b) Use the clause at [252.215-7006](#), Use of Employees or Individual Subcontractors Who are Members of the Selected Reserve, in solicitations that include the provision at [252.215-7005](#). Include the clause in the resultant contract only if the contractor stated in its proposal that it intends to perform the contract using employees or individual subcontractors who are members of the Selected Reserve, and that statement was used as an evaluation factor in the award decision.

**215.371 Only one offer.**

**215.371-1 Policy.**

It is DoD policy, if only one offer is received in response to a competitive solicitation—

(a) To take the required actions to promote competition (see [215.371-2](#)); and

(b) To ensure that the price is fair and reasonable (see [215.371-3](#)) and to comply with the statutory requirement for certified cost or pricing data (see FAR 15.403-4).

**215.371-2 Promote competition.**

Except as provided in sections [215.371-4](#) and [215.371-5](#)—

(a) If only one offer is received when competitive procedures were used and the solicitation allowed fewer than 30 days for receipt of proposals, the contracting officer shall—

(1) Consult with the requiring activity as to whether the requirements document should be revised in order to promote more competition (see FAR 6.502(b) and 11.002); and

(2) Resolicit, allowing an additional period of at least 30 days for receipt of proposals; and

(b) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received, follow the procedures at [PGI 215.371-2](#).

**215.371-3 Fair and reasonable price.**

(a) If there was “reasonable expectation... that ...two or more offerors, competing independently, would submit priced offers” but only one offer is received, this circumstance does not constitute adequate price competition unless an official at a level above the contracting officer approves the determination that the price is reasonable (see FAR 15.403-1(c)(1)(ii)).

(b) Except as provided in section [215.371-4](#)(a), if only one offer is received when competitive procedures were used and the solicitation allowed at least 30 days for

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### Part 215—Contracting By Negotiation

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receipt of proposals (unless the 30-day requirement is not applicable in accordance with [215.371-4\(a\)\(3\)](#) or has been waived in accordance with section [215.371-5](#)), the contracting officer shall—

(1) Determine through cost or price analysis that the offered price is fair and reasonable and that adequate price competition exists (with approval of the determination at a level above the contracting officer) or another exception to the requirement for certified cost or pricing data applies (see FAR 15.403-1(c) and 15.403-4). In these circumstances, no further cost or pricing data is required; or

(2)(i) Obtain from the offeror cost or pricing data necessary to determine a fair and reasonable price and comply with the requirement for certified cost or pricing data at FAR 15.403-4. For acquisitions that exceed the cost or pricing data threshold, if no exception at FAR 15.403-1(b) applies, the cost or pricing data shall be certified; and

(ii) Enter into negotiations with the offeror as necessary to establish a fair and reasonable price. The negotiated price should not exceed the offered price.

#### **215.371-4 Exceptions.**

(a) The requirements at sections [215.371-2](#) do not apply to—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Acquisitions, as determined by the head of the contracting activity, in support of contingency or humanitarian or peacekeeping operations; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate the provision of international disaster assistance; or to support response to an emergency or major disaster;

(3) Small business set-asides under FAR subpart 19.5, set asides offered and accepted into the 8(a) Program under FAR subpart 19.8, or set-asides under the HUBZone Program (see FAR 19.1305(c)), the Service-Disabled Veteran-Owned Small Business Procurement Program (see FAR 19.1405(c)), or the Women-Owned Small Business Program (see FAR 19.1505(d));

(4) Acquisitions of science and technology, as specified in [235.016\(a\)](#); or

(5) Acquisitions of architect-engineer services (see FAR 36.601-2).

(b) The applicability of an exception in paragraph (a) of this section does not eliminate the need for the contracting officer to seek maximum practicable competition and to ensure that the price is fair and reasonable.

#### **215.371-5 Waiver.**

(a) The head of the contracting activity is authorized to waive the requirement at [215.371-2](#) to resolicit for an additional period of at least 30 days.

(b) This waiver authority cannot be delegated below one level above the contracting officer.

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### Part 215—Contracting By Negotiation

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#### **215.371-6 Solicitation provision.**

Use the provision at [252.215-7007](#), Notice of Intent to Resolicit, in competitive solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that will be solicited for fewer than 30 days, unless an exception at [215.371-4](#) applies or the requirement is waived in accordance with [215.371-5](#).

**SUBPART 215.5—PREAWARD, AWARD, AND POSTAWARD  
NOTIFICATIONS, PROTESTS, AND MISTAKES**

*(Revised February 15, 2019)*

**215.503 Notifications to unsuccessful offerors.**

If the Government exercises the authority provided in [239.7305](#)(d), the notifications to unsuccessful offerors, either preaward or postaward, shall not reveal any information that is determined to be withheld from disclosure in accordance with 10 U.S.C. 2339a (see subpart [239.73](#)).

**215.506 Postaward debriefing of offerors.**

(e) If the Government exercises the authority provided in [239.7305](#)(d), the debriefing shall not reveal any information that is determined to be withheld from disclosure in accordance with 10 U.S.C. 2339a (see subpart [239.73](#)).

(Revised February 15, 2019)

**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-reimbursement 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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### Part 234—Major System Acquisition

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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.**

A contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement may contain a contract line item or contract option for the provision of advanced component development, prototype, or initial production of technology developed under the contract or the delivery of initial or additional 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:

(1) 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.

(2) The term of the contract line item or contract option shall be for not more than 2 years.

(3) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed \$100 million in fiscal year 2017 constant dollars. (10 U.S.C. 2302e)

See DoD [Class Deviation 2015-00014](#) Extension of Contract Authority for Advanced Component Development and Prototype Units, issued on March 27, 2015. The class deviation extends the authority for the provision of advanced component development or prototype of technology developed under a contract for new technology to September 30, 2019. This deviation is effective until incorporated in the DFARS or rescinded.

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## Part 235—Research and Development Contracting

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(Revised February 15, 2019)

**235.001 Definitions.**

“Research and development” means those efforts described by the Research, Development, Test, and Evaluation (RDT&E) budget activity definitions found in the DoD Financial Management Regulation (DoD 7000.14-R), Volume 2B, Chapter 5.

**235.006 Contracting methods and contract type.**

(b)(i) For major defense acquisition programs as defined in 10 U.S.C. 2430—

(A) Follow the procedures at [234.004](#); and

(B) Notify the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(ii) For other than major defense acquisition programs—

(A) Do not award a fixed-price type contract for a development program effort unless—

(1) The level of program risk permits realistic pricing;

(2) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(3) A written determination that the criteria of paragraphs (b)(ii)(A)(1) and (2) of this section have been met is executed—

(i) By the USD(AT&L) if the contract is over \$25 million and is for: research and development for a non-major system; the development of a major system (as defined in FAR 2.101); or the development of a subsystem of a major system; or

(ii) By the contracting officer for any development not covered by paragraph (b)(ii)(A)(3)(i) of this section.

(B) Obtain USD(AT&L) approval of the Government’s prenegotiation position before negotiations begin, and obtain USD(AT&L) approval of the negotiated agreement with the contractor before the agreement is executed, for any action that is—

(1) An increase of more than \$250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(2) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is \$100 million or more; or

(3) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, that increases the price or ceiling price by more than \$250 million for equivalent quantities.

**235.006-70 Manufacturing Technology Program.**

In accordance with 10 U.S.C. 2521(d), for acquisitions under the Manufacturing Technology Program—

(a) Award all contracts using competitive procedures; and

(b) Include in all solicitations an evaluation factor that addresses the extent to which offerors propose to share in the cost of the project (see FAR 15.304).

**235.006-71 Competition.**

(a) Use of a broad agency announcement with peer or scientific review for the award of science and technology proposals in accordance with [235.016\(a\)](#) fulfills the requirement for full and open competition (see [206.102\(d\)\(2\)](#)).

(b) See [234.005-1](#) for limitations on the use of contract line items or contract options for the provision of advanced component development or prototypes of technology developed under a competitively awarded proposal.

**235.008 Evaluation for award.**

See [209.570](#) for limitations on the award of contracts to contractors acting as lead system integrators.

**235.010 Scientific and technical reports.**

(b) For DoD, the Defense Technical Information Center is responsible for collecting all scientific and technical reports. For access to these reports, follow the procedures at [PGI 235.010\(b\)](#).

**235.015-70 Special use allowances for research facilities acquired by educational institutions.**

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

(1) “Research facility” means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) “Special use allowance” means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

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(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR Subpart 31.3.

(b) *Policy.*

(1) Educational institutions are to furnish the facilities necessary to perform defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.*

(1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

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(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, who approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

**235.016 Broad agency announcement.**

(a) *General.* A broad agency announcement with peer or scientific review may be used for the award of science and technology proposals. Science and technology proposals include proposals for the following:

- (i) Basic research (budget activity 6.1).
- (ii) Applied research (budget activity 6.2).
- (iii) Advanced technology development (budget activity 6.3).
- (iv) Advanced component development and prototypes (budget activity 6.4).

**235.017 Federally Funded Research and Development Centers.**

(a) *Policy.*

(2) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (Section 8107 of Pub. L. 102-172 and similar sections in subsequent Defense appropriations acts).

**235.017-1 Sponsoring agreements.**

(c)(4) DoD-sponsored FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute operated by Carnegie Mellon) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103-337).

**235.070 Indemnification against unusually hazardous risks.**

**235.070-1 Indemnification under research and development contracts.**

(a) Under 10 U.S.C. 2354, and if authorized by the Secretary concerned, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

- (1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and
- (2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—
  - (i) Results from a risk that the contract defines as “unusually hazardous;”
  - (ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

**235.070-2 Indemnification under contracts involving both research and development and other work.**

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Pub. L. 85-804. Pub. L. 85-804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Pub. L. 85-804 must also comply with FAR 50.104-3.

**235.070-3 Contract clauses.**

When the contractor is to be indemnified in accordance with [235.070-1](#), use either—

(a) The clause at [252.235-7000](#), Indemnification Under 10 U.S.C. 2354--Fixed Price; or

(b) The clause at [252.235-7001](#), Indemnification Under 10 U.S.C. 2354--Cost-Reimbursement, as appropriate.

**235.071 Export-controlled items.**

For requirements regarding access to export-controlled items, see [225.7901](#).

**235.072 Additional contract clauses.**

(a) Use a clause substantially the same as the clause at [252.235-7002](#), Animal Welfare, in solicitations and contracts involving research, development, test, and evaluation or training that use live vertebrate animals.

(b) Use the basic or the alternate of the clause at [252.235-7003](#), Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(1) Use the basic clause if agency procedures do not authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(2) Use the alternate I clause if agency procedures authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain frequency authorization.

(c) Use the clause at [252.235-7010](#), Acknowledgment of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at [252.235-7011](#), Final Scientific or Technical Report, in solicitations and contracts for research and development.

(e) Use the clause at [252.235-7004](#), Protection of Human Subjects, in solicitations and contracts that include or may include research involving human subjects in

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accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). The clause—

(1) Applies to solicitations and contracts awarded by any DoD component, regardless of mission or funding Program Element Code; and

(2) Does not apply to use of cadaver materials alone, which are not directly regulated by 32 CFR Part 219 or DoD Directive 3216.02, and which are governed by other DoD policies and applicable State and local laws.

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## Part 236—Construction and Architect-Engineer Contracts

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**SUBPART 236.3—TWO-PHASE DESIGN-BUILD SELECTION PROCEDURES**  
*(Added February 15, 2019)*

**236.303-1 Phase One.**

(a)(4) In lieu of the limitations on the maximum number of offerors that may be selected to submit phase-two proposals at FAR 36.303-1(a)(4), for DoD—

(i) If the contract value exceeds \$4 million, the maximum number of offerors specified in the solicitation that are to be selected to submit phase-two proposals shall not exceed five, unless—

(A) The solicitation is issued for an indefinite-delivery indefinite-quantity contract for design-build construction; or

(B) The head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer's decision with respect to an individual solicitation, that a maximum number greater than five is in the best interest of the Government and is consistent with the purposes and objectives of the two-phase selection procedures. The decision shall be documented in the contract file (10 U.S.C 2305a(d)).

(ii) If the contract value is at or below \$4 million, the maximum number of offerors specified in the solicitation that are to be selected to submit phase-two proposals is at the discretion of the contracting officer.

**SUBPART 239.73—REQUIREMENTS FOR INFORMATION RELATING TO  
SUPPLY CHAIN RISK**

*(Revised February 15, 2019)*

**239.7300 Scope of subpart.**

This subpart implements 10 U.S.C. 2339a and elements of DoD Instruction 5200.44, Protection of Mission Critical Functions to Achieve Trusted Systems and Networks (TSN), at

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/520044p.pdf?ver=2018-11-08-075800-903>.

**239.7301 Definitions.**

As used in this subpart—

“Covered item of supply” means an item of information technology that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system (see 10 U.S.C. 2339a).

“Covered system” means a national security system, as that term is defined at 44 U.S.C. 3552(b) (see 10 U.S.C. 2339a). It is any information system, including any telecommunications system, used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

- (1) The function, operation, or use of which—
  - (i) Involves intelligence activities;
  - (ii) Involves cryptologic activities related to national security;
  - (iii) Involves command and control of military forces;
  - (iv) Involves equipment that is an integral part of a weapon or weapons system; or
  - (v) Is critical to the direct fulfillment of military or intelligence missions, but this does not include a system that is to be used for routine administrative and business applications, including payroll, finance, logistics, and personnel management applications; or
- (2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

“Information technology” (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

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(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

- (i) Its use; or
- (ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment acquired by a contractor incidental to a contract.

“Supply chain risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 10 U.S.C. 2339a).

#### **239.7302 Applicability.**

Notwithstanding FAR 39.001, this subpart shall be applied to acquisition of information technology for covered systems (see 10 U.S.C. 2339a) for procurements involving—

- (a) A source selection for a covered system or a covered item of supply involving either a performance specification (see 10 U.S.C. 2305(a)(1)(C)(ii)), or an evaluation factor (see 10 U.S.C. 2305(a)(2)(A)), relating to supply chain risk;
- (b) The consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply where the task or delivery order contract concerned includes a requirement relating to supply chain risk (see 10 U.S.C. 2304c(d)(3) and FAR 16.505(b)(1)(iv)(D)); or
- (c) Any contract action involving a contract for a covered system or a covered item of supply where such contract includes a requirement relating to supply chain risk.

#### **239.7303 Authorized individuals.**

(a) Subject to [239.7304](#), the following individuals are authorized to take the actions authorized by [239.7305](#):

- (1) The Secretary of Defense.
- (2) The Secretary of the Army.

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(3) The Secretary of the Navy.

(4) The Secretary of the Air Force.

(b) The individuals authorized at paragraph (a) may not delegate the authority to take the actions at [239.7305](#) or the responsibility for making the determination required by [239.7304](#) to an official below the level of—

(1) For the Department of Defense, the Under Secretary of Defense for Acquisition and Sustainment; and

(2) For the military departments, the service acquisition executive for the department concerned.

#### **239.7304 Determination and notification.**

The individuals authorized in [239.7303](#) may exercise the authority provided in [239.7305](#) only after—

(a) Obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

(b) Making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(1) Use of the authority in [239.7305](#)(a),(b), or (c) is necessary to protect national security by reducing supply chain risk;

(2) Less intrusive measures are not reasonably available to reduce such supply chain risk; and

(3) In a case where the individual authorized in [239.7303](#) plans to limit disclosure of information under [239.7305](#)(d), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(c)(1) Providing a classified or unclassified notice of the determination made under paragraph (b) of this section—

(i) In the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(ii) In the case of a covered system not otherwise included in paragraph (a) of this section, to the congressional defense committees; and

(2) The notice shall include—

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(i) The following information (see 10 U.S.C. 2304(f)(3)):

(A) A description of the agency's needs.

(B) An identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception.

(C) A determination that the anticipated cost will be fair and reasonable.

(D) A description of the market survey conducted or a statement of the reasons a market survey was not conducted.

(E) A listing of the sources, if any, that expressed in writing an interest in the procurement.

(F) A statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs;

(ii) The joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (a) of this section;

(iii) A summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph (a) of this section; and

(iv) A summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

#### **239.7305 Exclusion and limitation on disclosure.**

Subject to [239.7304](#), the individuals authorized in [239.7303](#) may, in the course of procuring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system—

(a) Exclude a source that fails to meet qualification standards established in accordance with the requirements of 10 U.S.C. 2319, for the purpose of reducing supply chain risk in the acquisition of covered systems;

(b) Exclude a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order;

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(c) Withhold consent for a contractor to subcontract with a particular source or direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract; and

(d) Limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out any of the actions authorized by paragraphs (a) through (c) of this section, and if such disclosures are so limited—

(1) No action undertaken by the individual authorized under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) The authorized individual shall—

(i) Notify appropriate parties of action taken under paragraphs (a) through (d) of this section and the basis for such action only to the extent necessary to effectuate action;

(ii) Notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(iii) Ensure the confidentiality of any such notifications.

#### **239.7306 Solicitation provision and contract clause.**

(a) Insert the provision at [252.239-7017](#), Notice of Supply Chain Risk, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301.

(b) Insert the clause at [252.239-7018](#), Supply Chain Risk, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301.

**SUBPART 247.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS**

*(Revised February 15, 2019)*

**247.570 Scope.**

This subpart—

(a) Implements—

(1) The Cargo Preference Act of 1904 ("the 1904 Act"), 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, DoD;

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam; and

(3) Section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), which addresses requirements that apply to riding gang members and DoD-exempted individuals (see [252.247-7027\(c\)](#)) who perform work on U.S.-flag vessels under DoD contracts for transportation services documented under chapter 121, title 46 U.S.C.

(b) Does not specifically implement the Cargo Preference Act of 1954 ("the 1954 Act"), 46 U.S.C. 1241(b). The 1954 Act is applicable to DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in DoD exceeding the 1954 Act's requirements; and

(c) Does not apply to ocean transportation of the following products, in which case FAR Subpart 47.5 applies:

(1) Products obtained for contributions to foreign assistance programs.

(2) Products owned by agencies other than DoD, unless the products are clearly identifiable for eventual use by DoD.

**247.571 Definitions.**

As used in this subpart—

(a) "Components," "foreign flag vessel," "ocean transportation," "supplies," and "U.S.-flag vessel" have the meaning given in the clause at [252.247-7023](#), Transportation of Supplies by Sea.

(b) "Reflagging or repair work" has the meaning given in the clause at [252.247-7025](#), Reflagging or Repair Work.

(c) "Covered vessel," "foreign shipyard," "overhaul, repair, and maintenance work," "shipyard," and "U.S. shipyard" have the meaning given in the provision at [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards – Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

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#### 247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors shall transport supplies, as defined in the clause at [252.247-7023](#), Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available;

(2) The proposed charges to the Government are higher than charges to private persons for the transportation of like goods; or

(3) The proposed freight charges are excessive or unreasonable.

(b) Contracts must provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c) In accordance with 10 U.S.C. 2631(b)—

(1) Any vessel used under a time charter contract for the transportation of supplies under this section shall have any reflagging or repair work, as defined in the clause at [252.247-7025](#), Reflagging or Repair Work, performed in the United States or its outlying areas, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

(d) In accordance with Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364)—

(1) When obtaining carriage requiring a covered vessel, the contracting officer must consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and

(2) DoD must submit an annual report to the congressional defense committees, addressing the information provided by offerors with regard to overhaul, repair, and maintenance for covered vessels performed in the United States or Guam.

(e) In accordance with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), DoD may not award, renew or extend, or exercise an option under a charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C, unless the contract contains the clause at [252.247-7027](#).

**247.573 General.**

(a) *Delegated authority.* Pursuant to 10 U.S.C. 2631(a) and Secretary of Defense Memorandum dated February 7, 2012, (see [PGI 247.573](#)) the authority to make determinations of excessive ocean liner rates and excessive charter rates is delegated to—

(1) The Commander, United States Transportation Command, for excessive ocean liner rate determinations; and

(2) The Secretary of the Navy for excessive charter rate determinations.

(b) *Procedures.*

(1) Contracting officers shall follow the procedures at [PGI 247.573](#)(b)(1) when purchase of ocean transportation services is incidental to a contract for supplies, services, or construction.

(2) Contracting officers shall follow the procedures at [PGI 247.573](#)(b)(2) when direct purchase of ocean transportation services is the principal purpose of the contract.

(3) Agency and department procedures relating to annual reporting requirements of information received from offerors in response to solicitation provision [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise of Noncontiguous Trade, are found at [PGI 247.573](#)(b)(3).

(4) Procedures are provided at [PGI 247.573](#)(b)(4) to accomplish security background checks pursuant to clause [252.247-7027](#), Riding Gang Member Requirements.

**247.574 Solicitation provisions and contract clauses.**

(a)(1) Use the provision at [252.247-7022](#), Representation of Extent of Transportation by Sea, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, except—

(i) Those for direct purchase of ocean transportation services; or

(ii) Those with an anticipated value at or below the simplified acquisition threshold.

(2) If the solicitation includes the provision at FAR 52.204-7, do not separately list [252.247-7022](#) in the solicitation.

(b) Use the basic or one of the alternates of the clause at [252.247-7023](#), Transportation of Supplies by Sea, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services.

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(1) Use the basic clause unless any of the supplies to be transported are commercial items that are—

(i) Shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract; or

(ii) Commissary or exchange cargoes transported outside of the Defense Transportation System when the contract is not a construction contract.

(2) Use the alternate I clause if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations when the contract is not a construction contract.

(3) Use the alternate II clause if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System (10 U.S.C. 2643), when the contract is not a construction contract.

(c) Use the clause at [252.247-7025](#), Reflagging or Repair Work, in all time charter solicitations and contracts, including time charter solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with [247.572\(c\)\(2\)](#).

(d) Use the provision at [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that require a covered vessel for carriage of cargo for DoD.

(e) Use the clause at [252.247-7027](#), Riding Gang Member Requirements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C.

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(Revised February 15, 2019)

#### **252.204-7000 Disclosure of Information.**

As prescribed in [204.404-70](#)(a), use the following clause:

#### DISCLOSURE OF INFORMATION (OCT 2016)

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

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

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

or

(3) The information results from or arises during the performance of a project that involves no covered defense information (as defined in the clause at DFARS [252.204-7012](#)) and has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information), in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008 (available at DFARS [PGI 204.4](#)).

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

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

(End of clause)

#### **252.204-7001 Reserved.**

#### **252.204-7002 Payment for Subline Items Not Separately Priced.**

As prescribed in [204.7104-1](#)(b)(3)(iv), use the following clause:

#### PAYMENT FOR SUBLINE ITEMS NOT SEPARATELY PRICED (DEC 1991)

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

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

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

(2) The Government has accepted them.

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

(End of clause)

#### **252.204-7003 Control of Government Personnel Work Product.**

As prescribed in [204.404-70](#)(b), use the following clause:

##### CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

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

(End of clause)

#### **252.204-7004 Antiterrorism Awareness Training for Contractors.**

As prescribed in [204.7203](#), use the following clause:

##### LEVEL I ANTITERRORISM AWARENESS TRAINING FOR CONTRACTORS (FEB 2019)

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

“Military installation” means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (see 10 U.S.C. 2801(c)(4)).

(b) *Training.* Contractor personnel who require routine physical access to a Federally-controlled facility or military installation shall complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter. In accordance with Department of Defense Instruction O-2000.16 Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training shall be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a Level I antiterrorism awareness instructor.

(c) *Additional information.* Information and guidance pertaining to DoD antiterrorism awareness training is available at <https://jko.jten.mil/> or as otherwise identified in the performance work statement.

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(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts, including subcontracts for commercial items, when subcontractor performance requires routine physical access to a Federally-controlled facility or military installation.

(End of clause)

#### **252.204-7005 Oral Attestation of Security Responsibilities.**

As prescribed in [204.404-70](#)(c), use the following clause:

##### ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)

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

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

(End of clause)

#### **252.204-7006 Billing Instructions.**

As prescribed in [204.7109](#), use the following clause:

##### BILLING INSTRUCTIONS (OCT 2005)

When submitting a request for payment, the Contractor shall—

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

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

(End of clause)

#### **252.204-7007 Alternate A, Annual Representations and Certifications.**

As prescribed in [204.1202](#), use the following provision:

##### ALTERNATE A, ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEC 2018)

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

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

(i) [252.209-7003](#), Reserve Officer Training Corps and Military Recruiting on Campus—Representation. Applies to all solicitations with institutions of higher education.

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

(iii) [252.222-7007](#), Representation Regarding Combating Trafficking in Persons, as prescribed in [222.1771](#). Applies to solicitations with a value expected to exceed the simplified acquisition threshold.

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

(v) [252.225-7049](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations. Applies to solicitations for the acquisition of commercial satellite services.

(vi) [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of \$150,000 or more.

(vii) [252.229-7012](#), Tax Exemptions (Italy)—Representation. Applies to solicitations and contracts when contract performance will be in Italy.

(viii) [252.229-7013](#), Tax Exemptions (Spain)—Representation. Applies to solicitations and contracts when contract performance will be in Spain.

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

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

\_\_\_ (i) [252.209-7002](#), Disclosure of Ownership or Control by a Foreign Government.

\_\_\_ (ii) [252.225-7000](#), Buy American—Balance of Payments Program Certificate.

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\_\_\_ (iii) [252.225-7020](#), Trade Agreements Certificate.

\_\_\_ Use with Alternate I.

\_\_\_ (iv) [252.225-7031](#), Secondary Arab Boycott of Israel.

\_\_\_ (v) [252.225-7035](#), Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

\_\_\_ Use with Alternate I.

\_\_\_ Use with Alternate II.

\_\_\_ Use with Alternate III.

\_\_\_ Use with Alternate IV.

\_\_\_ Use with Alternate V.

(e) The offeror has completed the annual representations and certifications electronically via the SAM website at <https://www.acquisition.gov/>. After reviewing the SAM database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in FAR 52.204-8(c) and paragraph (d) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below *[offeror to insert changes, identifying change by provision number, title, date]*. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS Provision #	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications located in the SAM database.

(End of provision)

**252.204-7008 Compliance with Safeguarding Covered Defense Information Controls.**

As prescribed in [204.7304](#)(a), use the following provision:

COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (OCT 2016)

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

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“Controlled technical information,” “covered contractor information system,” “covered defense information,” “cyber incident,” “information system,” and “technical information” are defined in clause [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident Reporting.

(b) The security requirements required by contract clause [252.204-7012](#), shall be implemented for all covered defense information on all covered contractor information systems that support the performance of this contract.

(c) For covered contractor information systems that are not part of an information technology service or system operated on behalf of the Government (see [252.204-7012\(b\)\(2\)](#)—

(1) 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 “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (see <http://dx.doi.org/10.6028/NIST.SP.800-171>) that are in effect at the time the solicitation is issued or as authorized by the contracting officer not later than December 31, 2017.

(2)(i) If the Offeror proposes to vary from any of the security requirements specified by NIST SP 800-171 that are 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 DoD Chief Information Officer (CIO), a written explanation of—

(A) Why a particular security requirement is not applicable; or

(B) How an alternative but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.

(ii) An authorized representative of the DoD CIO will adjudicate offeror requests to vary from NIST SP 800-171 requirements in writing prior to contract award. Any accepted variance from NIST SP 800-171 shall be incorporated into the resulting contract.

(End of provision)

#### **252.204-7009 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.**

As prescribed in [204.7304\(b\)](#), use the following clause:

##### LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016)

(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, in which unauthorized intentional or

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unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered defense information” means unclassified controlled technical information or other information (as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>) 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 DoD 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 is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS [252.227-7013](#), Rights in Technical Data-Noncommercial Items, 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) *Restrictions.* The Contractor agrees that the following conditions apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party’s reporting of a cyber incident pursuant to DFARS clause [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident Reporting (or derived from such information obtained under that clause):

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(1) 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 [252.204-7012](#), and shall not be used for any other purpose.

(2) The Contractor shall protect the information against unauthorized release or disclosure.

(3) 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.

(4) 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.

(5) A breach of these obligations or restrictions may subject the Contractor to—

(i) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; 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) *Subcontracts.* 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 defense information and cyber incident reporting, including subcontracts for commercial items, without alteration, except to identify the parties.

(End of clause)

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

As prescribed in [204.470-3](#), use the following clause:

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

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

(1) Immediately provide written notification to the following DoD Program Manager:

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*[Contracting Officer to insert Program Manager's name, mailing address, e-mail address, telephone number, and facsimile number];*

(2) Include in the notification—

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

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

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

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

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

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

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

(1) DoD will, at a minimum—

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

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

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

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

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

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

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notify the Contractor as to—

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

(2) Whether additional security measures are needed; and

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

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

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

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

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

(End of clause)

#### **252.204-7011 Reserved**

#### **252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.**

As prescribed in [204.7304](#)(c), use the following clause:

#### **SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016)**

(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.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“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.

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“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, 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 DoD 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.

“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 is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information 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

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the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS [252.227-7013](#), Rights in Technical Data—Noncommercial Items, 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 [252.239-7010](#), 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)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil), within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

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(C) If the DoD 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 requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information 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 (g) 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.

(3) 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 (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.

*(c) Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information 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 covered defense information, 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 covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

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(d) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) *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 DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD 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 (e) of this clause.

(h) *DoD 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, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* 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 DoD is authorized to be released outside of DoD—

- (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) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at [252.204-7009](#),

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#### Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) 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.

(k) 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.

(l) *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 U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information 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 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

#### **252.204-7013 Limitations on the Use or Disclosure of Information by Litigation Support Offerors.**

As prescribed in [204.7403\(a\)](#), use the following provision. If the solicitation is a request for quotations, the terms "quotation" and "Quoter" may be substituted for "offer" and "Offeror".

#### LIMITATIONS ON THE USE OR DISCLOSURE OF INFORMATION BY

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#### LITIGATION SUPPORT OFFERORS (MAY 2016)

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

“Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

“Litigation information” means any information, including sensitive information, that is furnished to the contractor by or on behalf of the Government, or that is generated or obtained by the contractor in the performance of litigation support under a contract. The term does not include information that is lawfully, publicly available without restriction, including information contained in a publicly available solicitation.

“Litigation support” means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

“Sensitive information” means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

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

(b) *Limitations on use or disclosure of litigation information.* Notwithstanding any other provision of this solicitation, by submission of its offer, the Offeror agrees and acknowledges that—

(1) All litigation information will be accessed and used for the sole purpose of providing litigation support;

(2) The Offeror will take all precautions necessary to prevent unauthorized disclosure of litigation information;

(3) The litigation information shall not be used by the Offeror to compete against a third party for Government or nongovernment contracts; and

(4) Upon completion of the authorized litigation support activities, the Offeror will destroy or return to the Government at the request of the Contracting Officer all litigation information in its possession.

(c) *Indemnification and creation of third party beneficiary rights.* By submission of its offer, the Offeror agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from any claim or liability, including attorneys’ fees, court costs, and expenses, arising

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out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of any litigation information; and

(2) That any third party holding proprietary rights or any other legally protectable interest in any litigation information, in addition to any other rights it may have, is a third party beneficiary who shall have a right of direct action against the Offeror, and against any person to whom the Offeror has released or disclosed such litigation information, for any such unauthorized use or disclosure of such information.

(d) *Offeror employees.* By submission of its offer, the Offeror agrees to ensure that its employees are subject to use and nondisclosure obligations consistent with this provision prior to the employees being provided access to or use of any litigation information covered by this provision.

(End of provision)

#### **252.204-7014 Limitations on the Use or Disclosure of Information by Litigation Support Contractors.**

As prescribed in [204.7403\(b\)](#), use the following clause:

##### LIMITATIONS ON THE USE OR DISCLOSURE OF INFORMATION BY LITIGATION SUPPORT CONTRACTORS (MAY 2016)

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

“Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

“Litigation information” means any information, including sensitive information, that is furnished to the contractor by or on behalf of the Government, or that is generated or obtained by the contractor in the performance of litigation support work under a contract. The term does not include information that is lawfully, publicly available without restriction, including information contained in a publicly available solicitation.

“Litigation support” means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

“Litigation support contractor” means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a contract that contains this clause.

“Sensitive information” means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

“Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software

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documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) *Limitations on use or disclosure of litigation information.* Notwithstanding any other provision of this contract, the Contractor shall—

(1) Access and use litigation information only for the purpose of providing litigation support under this contract;

(2) Not disclose litigation information to any entity outside the Contractor's organization unless, prior to such disclosure the Contracting Officer has provided written consent to such disclosure;

(3) Take all precautions necessary to prevent unauthorized disclosure of litigation information;

(4) Not use litigation information to compete against a third party for Government or nongovernment contracts; and

(5) Upon completion of the authorized litigation support activities, destroy or return to the Government at the request of the Contracting Officer all litigation information in its possession.

(c) Violation of paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5) of this clause, is a basis for the Government to terminate this contract.

(d) *Indemnification and creation of third party beneficiary rights.* The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from any claim or liability, including attorneys' fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of any litigation information; and

(2) That any third party holding proprietary rights or any other legally protectable interest in any litigation information, in addition to any other rights it may have, is a third party beneficiary under this contract who shall have a right of direct action against the Contractor, and against any person to whom the Contractor has released or disclosed such litigation information, for any such unauthorized use or disclosure of such information.

(e) *Contractor employees.* The Contractor shall ensure that its employees are subject to use and nondisclosure obligations consistent with this clause prior to the employees being provided access to or use of any litigation information covered by this clause.

(f) *Flowdown.* Include the substance of this clause, including this paragraph (f), in all subcontracts, including subcontracts for commercial items.

(End of clause)

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#### **252.204-7015 Notice of Authorized Disclosure of Information for Litigation Support.**

As prescribed in [204.7403\(c\)](#), use the following clause:

#### NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016)

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

“Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

“Litigation support” means administrative, technical, or professional services provided in support of the Government during or in anticipation of litigation.

"Litigation support contractor" means a contractor (including its experts, technical consultants, subcontractors, and suppliers) providing litigation support under a contract that contains the clause at [252.204-7014](#), Limitations on the Use or Disclosure of Information by Litigation Support Contractors.

“Sensitive information” means controlled unclassified information of a commercial, financial, proprietary, or privileged nature. The term includes technical data and computer software, but does not include information that is lawfully, publicly available without restriction.

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

(b) *Notice of authorized disclosures.* Notwithstanding any other provision of this solicitation or contract, the Government may disclose to a litigation support contractor, for the sole purpose of litigation support activities, any information, including sensitive information, received--

- (1) Within or in connection with a quotation or offer; or
- (2) In the performance of or in connection with a contract.

(c) *Flowdown.* Include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items.

(End of clause)

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*(Revised February 15, 2019)*

#### **252.239-7000 Protection Against Compromising Emanations.**

As prescribed in [239.7103](#)(a), use the following clause:

##### PROTECTION AGAINST COMPROMISING EMANATIONS (JUN 2004)

(a) The Contractor shall provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSEM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standards specified by this contract, including the date through which the required accreditation is current or valid for the contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that information technology delivered under this contract satisfies the information assurance standards specified. The Government may conduct additional tests—

(1) At the installation site or contractor's facility; and

(2) Notwithstanding the existence of valid accreditations of information technology prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clause, the Contractor shall correct or replace accepted information technology found to be deficient within 1 year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered information technology be made by the Contractor, the 1-year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient information technology.

(End of clause)

#### **252.239-7001 Information Assurance Contractor Training and Certification.**

As prescribed in [239.7103](#)(b), use the following clause:

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#### INFORMATION ASSURANCE CONTRACTOR TRAINING AND CERTIFICATION (JAN 2008)

(a) The Contractor shall ensure that personnel accessing information systems have the proper and current information assurance certification to perform information assurance functions in accordance with DoD 8570.01-M, Information Assurance Workforce Improvement Program. The Contractor shall meet the applicable information assurance certification requirements, including—

(1) DoD-approved information assurance workforce certifications appropriate for each category and level as listed in the current version of DoD 8570.01-M; and

(2) Appropriate operating system certification for information assurance technical positions as required by DoD 8570.01-M.

(b) Upon request by the Government, the Contractor shall provide documentation supporting the information assurance certification status of personnel performing information assurance functions.

(c) Contractor personnel who do not have proper and current certifications shall be denied access to DoD information systems for the purpose of performing information assurance functions.

(End of clause)

#### **252.239-7002 Access.**

As prescribed in [239.7411](#)(a), use the following clause:

#### ACCESS (DEC 1991)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to Contractor furnished facilities. However, if the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when the Government does not permit Contractor access, the Government will reimburse the Contractor at mutually acceptable rates for the loss of or damage to the equipment due to the fault or negligence of the Government. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

#### **252.239-7003 Reserved.**

#### **252.239-7004 Orders for Facilities and Services.**

As prescribed in [239.7411](#)(a), use the following clause:

#### ORDERS FOR FACILITIES AND SERVICES (NOV 2005)

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The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

- (a) Commencing performance; or
- (b) Written acceptance by a duly authorized representative.

(End of clause)

#### **252.239-7005 Rates, Charges, and Services.**

As prescribed in [239.7411](#)(a), use the following clause:

##### RATES, CHARGES, AND SERVICES (NOV 2005)

(a) *Definition.* “Governmental regulatory body” means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not “governmental regulatory bodies.”

(b) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with—

- (1) All applicable tariffs, rates, charges, rules, regulations, or requirements;
  - (i) Lawfully established by a governmental regulatory body; and
  - (ii) Applicable to service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers;
- (2) Rates, terms, and conditions of service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or
- (3) Rates, terms, and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of a governmental regulatory body.

(c) The Government shall not prepay for services.

(d) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(e) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(f) Subject to the Cancellation or Termination of Orders clause, of this agreement/contract, the Government may stop the use of any service or facilities furnished under this agreement/contract at any time. The Government shall pay the contractor all charges for services and facilities adjusted to the effective date of discontinuance.

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(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

#### **252.239-7006 Tariff Information.**

As prescribed in [239.7411](#)(a), use the following clause:

#### TARIFF INFORMATION (JUL 1997)

(a) The Contractor shall provide to the Contracting Officer—

(1) Upon request, a copy of the Contractor's current existing tariffs (including changes);

(2) Before filing, any application to a Federal, State, or any other regulatory agency for new or changes to, rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government; and

(3) Upon request, a copy of all information, material, and data developed or prepared in support of or in connection with an application under paragraph (a)(2) of this clause.

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(b) The Contractor shall notify the Contracting Officer of any application that anyone other than the Contractor files with a governmental regulatory body which affects or will affect the rate or conditions of services under this agreement/contract. These requirements also apply to applications pending on the effective date of this agreement/contract.

(End of clause)

#### **252.239-7007 Cancellation or Termination of Orders.**

As prescribed in [239.7411](#)(a), use the following clause:

#### CANCELLATION OR TERMINATION OF ORDERS (NOV 2005)

(a) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges which—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Rates, Charges, and Services clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(c) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(d) If no applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures—

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the Title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale

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to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) less any costs the Government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract. Deduct from the Contractor's installed cost, the net salvage value (salvage value less cost of removal). In determining net salvage value, give consideration to foreseeable reuse of the facilities and equipment by the Contractor. Make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The Basic Cancellation Liability is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are cancelled. The Basic Termination Liability is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. Establish the liability period as mutually agreed to but not to exceed ten years.

(6) When the Basic Cancellation or Termination Liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvageable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(e) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the cancelled or terminated portion of this agreement/contract. The Government may make these payments if in the opinion of the Contracting Officer the total of the payments is within the amount the Contractor is

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entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

#### **252.239-7008 Reuse Arrangements.**

As prescribed in [239.7411](#)(a), use the following clause:

##### REUSE ARRANGEMENTS (DEC 1991)

(a) When feasible, the Contractor shall reuse cancelled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under the Cancellation or Termination of Orders—Common Carriers clause of this agreement/contract. The Basic Termination Liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of cancelled or terminated facilities or equipment, no charge shall apply and the Basic Cancellation or Termination Liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

#### **252.239-7009 Representation of Use of Cloud Computing.**

As prescribed in [239.7604](#)(a), use the following provision:

##### REPRESENTATION OF USE OF CLOUD COMPUTING (SEP 2015)

(a) *Definition.* “Cloud computing,” as used in this provision, 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.

(b) The Offeror shall indicate by checking the appropriate blank in paragraph (c) of this provision whether the use of cloud computing is anticipated under the resultant contract.

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(c) *Representation.* The Offeror represents that it—

\_\_\_\_\_ Does anticipate that cloud computing services will be used in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_\_ Does not anticipate that cloud computing services will be used in the performance of any contract or subcontract resulting from this solicitation.

(End of provision)

#### **252.239-7010 Cloud Computing Services.**

As prescribed in [239.7604\(b\)](#), use the following clause:

#### CLLOUD COMPUTING SERVICES (OCT 2016)

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

“Authorizing official,” as described in DoD Instruction 8510.01, Risk Management Framework (RMF) for DoD Information Technology (IT), 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.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“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 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 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.

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“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 that results in the transfer of classified or controlled unclassified 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,” in response to provision [252.239-7009](#), Representation of Use of Cloud Computing, 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 Cloud Computing Security Requirements Guide (SRG) (version in effect at the time the solicitation is issued or as authorized by the Contracting Officer) found at [http://iase.disa.mil/cloud\\_security/Pages/index.aspx](http://iase.disa.mil/cloud_security/Pages/index.aspx), unless notified by the Contracting Officer that this requirement has been waived by the DoD Chief Information Officer.

(3) The Contractor shall maintain within the United States or outlying areas all Government data that is not physically located on DoD premises, unless the Contractor receives written notification from the Contracting Officer to use another location, in accordance with DFARS [239.7602-2\(a\)](#).

(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.

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(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 that are related to the cloud computing service provided under this contract. Reports shall be submitted to DoD via <http://dibnet.dod.mil/>.

(e) *Malicious software.* The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(f) *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 paragraph (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 DoD to request the media or decline interest.

(g) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(h) *Cyber incident damage assessment activities.* If DoD 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 (f) of this clause.

(i) *Records management and facility access.*

(1) The Contractor shall provide the Contracting Officer all Government data and Government-related data in the format specified in the contract.

(2) The Contractor shall dispose of Government data and Government-related data in accordance with the terms of the contract and provide the confirmation of disposition to the Contracting Officer in accordance with contract closeout procedures.

(3) The Contractor shall provide the Government, or its authorized representatives, access to all Government data and Government-related data, access to contractor personnel involved in performance of the contract, and physical access to any Contractor facility with Government data, for the purpose of audits, investigations, inspections, or other similar activities, as authorized by law or regulation.

(j) *Notification of third party access requests.* The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Government data or Government-related data, including any warrants, seizures, or

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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 Government data and Government-related data from any unauthorized disclosure.

(k) *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.

(l) *Subcontracts*. The Contractor shall include this clause, including this paragraph (l), in all subcontracts that involve or may involve cloud services, including subcontracts for commercial items.

(End of clause)

#### **252.239-7011 Special Construction and Equipment Charges.**

As prescribed in [239.7411](#)(b), use the following clause:

##### SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (DEC 1991)

(a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.

(b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government's contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any credit.

(c) The amount of the direct special construction charge shall not exceed—

(1) The actual costs to the Contractor; and

(2) An amount properly allocable to the services to be provided to the Government.

(d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by—

(1) A cancellation or termination liability; or

(2) The Contractor's recurring or other nonrecurring charges.

(e) The Contractor represents that—

(1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and

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(2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.

(f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances—

(1) The Government paid direct special construction charges; or

(2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and

(3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.

(g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.

(End of clause)

#### **252.239-7012 Title to Telecommunication Facilities and Equipment.**

As prescribed in [239.7411](#)(b), use the following clause:

##### TITLE TO TELECOMMUNICATION FACILITIES AND EQUIPMENT (DEC 1991)

(a) Title to all Contractor furnished facilities and equipment used under this agreement/contract shall remain with the Contractor even if the Government paid the costs of constructing the facilities or equipment. A mutually accepted communications service authorization may provide for exceptions.

(b) The Contractor shall operate and maintain all telecommunication facilities and equipment used under this agreement/contract whether the Government or the Contractor has title.

(End of clause)

#### **252.239-7013 Obligation of the Government.**

As prescribed in [239.7411](#)(c), use the following clause:

##### OBLIGATION OF THE GOVERNMENT (JUL 2006)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communication service authorization, which is the contract and incorporates the terms of this agreement.

(End of clause)

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#### **252.239-7014 Term of Agreement.**

As prescribed in [239.7411](#)(c), use the following clause:

#### TERM OF AGREEMENT (DEC 1991)

(a) This agreement shall continue in force from year to year, unless terminated by either party by 60 days written notice.

(b) Termination of this agreement does not cancel any communication service authorizations previously issued.

(End of clause)

#### **252.239-7015 Continuation of Communication Service Authorizations.**

As prescribed in [239.7411](#)(c), use the following clause:

#### CONTINUATION OF COMMUNICATION SERVICE AUTHORIZATIONS (JUL 2006)

(a) All communication service authorizations issued by \_\_\_\_\_ incorporating Basic Agreement Number \_\_\_\_\_, dated \_\_\_\_\_, are modified to incorporate this basic agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause incorporating other agreements with the Contractor may also be modified to incorporate this agreement.

(c) This basic agreement is not a contract.

(End of clause)

#### **252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services.**

As prescribed in [239.7411](#)(d), use the following clause:

#### TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC 1991)

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

(1) “Securing” means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) “Sensitive information” means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

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(3) “Telecommunications systems” means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit—

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: (Identify the location.)

(c) To provide the security, the Contractor shall use Government-approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from (identify where list can be obtained). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with (list and identify the location of any telecommunications security equipment, device, technique, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as may be provided elsewhere in this contract, the Contractor shall furnish all telecommunications security equipment, devices, techniques, or services necessary to perform this contract. The Contractor must meet ownership eligibility conditions for communications security equipment designated as controlled cryptographic items.

(e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts which require securing telecommunications.

(End of clause)

#### **252.239-7017 Notice of Supply Chain Risk.**

As prescribed in [239.7306](#)(a), use the following provision:

#### NOTICE OF SUPPLY CHAIN RISK (FEB 2019)

(a) *Definitions.* “Supply chain risk,” as used in this provision, means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (10 U.S.C. 2339a).

(b) In order to manage supply chain risk, the Government may use the authorities provided by section 10 U.S.C. 2339a. In exercising these authorities, the Government

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may consider information, public and non-public, including all-source intelligence, relating to an offeror and its supply chain.

(c) If the Government exercises the authority provided in 10 U.S.C. 2339a to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court.

(End of provision)

#### **252.239-7018 Supply Chain Risk.**

As prescribed in [239.7306\(b\)](#), use the following clause:

#### SUPPLY CHAIN RISK (FEB 2019)

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

“Information technology” (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment acquired by a contractor incidental to a contract.

“Supply chain risk,” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system (see 10 U.S.C. 2339a).

(b) The Contractor shall mitigate supply chain risk in the provision of supplies and services to the Government.

(c) In order to manage supply chain risk, the Government may use the authorities provided by 10 U.S.C. 2339a. In exercising these authorities, the Government may

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consider information, public and non-public, including all-source intelligence, relating to a Contractor's supply chain.

(d) If the Government exercises the authority provided in 10 U.S.C. 2339a to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court.

(End of clause)

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*(Revised February 15, 2019)*

#### **252.247-7000 Hardship Conditions.**

As prescribed in [247.270-4\(a\)](#), use the following clause:

##### HARDSHIP CONDITIONS (AUG 2000)

(a) If the Contractor finds unusual ship, dock, or cargo conditions associated with loading or unloading a particular cargo, that will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates, the Contractor shall--

(1) Notify the Contracting Officer before performing the work, if feasible, but no later than the vessel sailing time; and

(2) Submit any associated request for price adjustment to the Contracting Officer within 10 working days of the vessel sailing time.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer will investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the applicable man-hour rates set forth in the schedule of rates of this contract.

(End of clause)

#### **252.247-7001 Price Adjustment.**

As prescribed in [247.270-4\(b\)](#), use the following clause:

##### PRICE ADJUSTMENT (JAN 1997)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of (insert date), and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1).

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(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

- (1) Are pursuant to the provisions of the collective bargaining agreements; or
- (2) Are a result of effective modifications to the agreements; and
- (3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or work-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

- (i) Causes;
- (ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or work-hour prices will be allowed in excess of \_\_\_\_ percent per year, except as provided in the Changes clause of this contract.

(1) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or work-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause

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of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a statement that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

#### **252.247-7002 Revision of Prices.**

As prescribed in [247.270-4\(c\)](#), use the following clause:

#### REVISION OF PRICES (DEC 1991)

(a) *Definition.* “Wage adjustment,” as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

- (1) Substantially affects the cost of performing this contract;
- (2) Is generally applicable to the port where work under this contract is performed; and
- (3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.*

- (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.
- (2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.
- (3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

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(d) *Submission of data.* At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.*

(1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.* If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.*

(1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

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(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

#### **252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.**

As prescribed in [247.207](#), use the following clause:

##### PASS-THROUGH OF MOTOR CARRIER FUEL SURCHARGE ADJUSTMENT TO THE COST BEARER (JUN 2013)

(a) This clause implements section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(b) Unless an exception is authorized by the Contracting Officer, the Contractor shall pass through any motor carrier fuel-related surcharge adjustments to the person, corporation, or entity that directly bears the cost of fuel for shipment(s) transported under this contract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, with motor carriers, brokers, or freight forwarders.

(End of clause)

#### **252.247-7004 Indefinite Quantities—Fixed Charges.**

As prescribed in [247.270-4](#)(d), use the following clause:

##### INDEFINITE QUANTITIES--FIXED CHARGES (DEC 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the

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Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)

#### **252.247-7005 Indefinite Quantities—No Fixed Charges.**

As prescribed in [247.270-4\(e\)](#), use the following clause:

##### INDEFINITE QUANTITIES--NO FIXED CHARGES (DEC 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than \$100.

(End of clause)

#### **252.247-7006 Removal of Contractor's Employees.**

As prescribed in [247.270-4\(f\)](#), use the following clause:

##### REMOVAL OF CONTRACTOR'S EMPLOYEES (DEC 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

#### **252.247-7007 Liability and Insurance.**

As prescribed in [247.270-4\(g\)](#), use the following clause:

##### LIABILITY AND INSURANCE (DEC 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

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(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than \$300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than \$300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

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(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

#### **252.247-7008 Evaluation of Bids.**

*Basic.* As prescribed in [247.271-3](#) and [247.271-3\(a\)](#) and (a)(1), use the following provision:

##### EVALUATION OF BIDS—BASIC (APR 2014)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as “No Charge,” or the letters “N/C” or “0,” must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

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(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be \$500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

*Alternate I.* As prescribed in [247.271-3](#) and [247.271-3\(a\)](#) and (a)(2), use the following provision, which adds a paragraph (e) not included in the basic provision:

#### EVALUATION OF BIDS—ALTERNATE I (APR 2014)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as “No Charge,” or the letters “N/C” or “0,” must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be \$500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

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(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(e) Notwithstanding paragraph (a), when “additional services” are added to any schedule, such “additional services” items will not be considered in the evaluation of bids.

(End of provision)

#### **252.247-7009 Award.**

As prescribed in [247.271-3\(b\)](#), use the following provision:

#### AWARD (DEC 1991)

(a) The Government shall make award by area to the qualified low bidder under each of the specified schedules to the extent of the bidder's stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

#### **252.247-7010 Scope of Contract.**

As prescribed in [247.271-3\(d\)](#), use the following clause:

#### SCOPE OF CONTRACT (DEC 1991)

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP-B-580), all equipment, plant and labor; and

(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

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- (i) Stenciling;
- (ii) Cooperage;
- (iii) Drayage of personal property in connection with other services;
- (iv) Decontainerization of inbound shipments of personal property; and
- (v) The handling of shipments into and out of the Contractor's facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)

#### **252.247-7011 Period of Contract.**

As prescribed in [247.271-3\(e\)](#), use the following clause:

##### PERIOD OF CONTRACT (OCT 2001)

(a) This contract begins January 1, \_\_\_\_, and ends December 31, \_\_\_\_, both dates inclusive. Any work ordered before, and not completed by the expiration date shall be governed by the terms of this contract.

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

#### **252.247-7012 Ordering Limitation.**

As prescribed in [247.271-3\(g\)](#), use the following clause:

##### ORDERING LIMITATION (DEC 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

(c) In the event the procedure in paragraphs (a) and (b) does not fulfill the Government's total daily requirement, the Government may offer additional orders

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under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

#### **252.247-7013 Contract Areas of Performance.**

As prescribed in [247.271-3\(h\)](#), use the following clause and complete paragraph (b) by defining each area of performance as required (see [247.271-2\(b\)](#)):

##### CONTRACT AREAS OF PERFORMANCE (DEC 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein: \_\_\_\_\_.

(End of clause)

#### **252.247-7014 Demurrage.**

As prescribed in [247.271-3\(i\)](#), use the following clause:

##### DEMURRAGE (DEC 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

#### **252.247-7015 Reserved.**

#### **252.247-7016 Contractor Liability for Loss or Damage.**

As prescribed in [247.271-3\(k\)](#), use the following clause:

##### CONTRACTOR LIABILITY FOR LOSS OR DAMAGE (DEC 1991)

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

“Article” means any shipping piece or package and its contents.

“Schedule” means the level of service for which specific types of traffic apply as described in DoD 4500.34-R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

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(i) *Non-negligent damage.* For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of \$1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

#### **252.247-7017 Erroneous Shipments.**

As prescribed in [247.271-3\(l\)](#), use the following clause:

#### ERRONEOUS SHIPMENTS (DEC 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) shall be—

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- (1) With the least possible delay;
- (2) By a mode of transportation selected by the Contracting Officer; and
- (3) At the Contractor's expense.

(End of clause)

#### **252.247-7018 Subcontracting.**

As prescribed in [247.271-3\(m\)](#), use the following clause:

##### SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

#### **252.247-7019 Drayage.**

As prescribed in [247.271-3\(n\)](#), use the following clause:

##### DRAYAGE (DEC 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor's warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination Contractor's facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for member's pickup at destination delivery point.

(c) The Contractor will reposition empty Government containers—

- (1) Within the area of performance;
- (2) As directed by the Contracting Officer; and
- (3) At no additional cost to the Government.

(End of clause)

#### **252.247-7020 Additional Services.**

As prescribed in [247.271-3\(n\)](#), use the following clause:

##### ADDITIONAL SERVICES (AUG 2000)

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The Contractor shall provide additional services not included in the Schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Military Traffic Management Command in effect at time of order.

(End of clause)

#### **252.247-7021 Returnable Containers Other Than Cylinders.**

As prescribed in [247.305-70](#), use the following clause:

##### RETURNABLE CONTAINERS OTHER THAN CYLINDERS (MAY 1995)

(a) "Returnable container," as used in this clause, includes reels, spools, drums, carboys, liquid petroleum gas containers, and other returnable containers when the Contractor retains title to the container.

(b) Returnable containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of \_\_\_\_ (insert number of days) calendar days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of \$\_\_\_\_\_ (insert dollar amount for rental) per container per day, computed separately for containers for each type, size, and capacity, and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that container:

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(Insert the container types, sizes, capacities, and associated replacement values.)  
These containers shall become Government property.

(d) If any lost container is located within \_\_\_\_ (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of clause)

#### **252.247-7022 Representation of Extent of Transportation by Sea.**

As prescribed in [247.574](#)(a), use the following provision:

##### REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the

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resultant contract. The term “supplies” is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) *Representation.* The Offeror represents that it—

\_\_\_\_\_ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

\_\_\_\_\_ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at [252.247-7024](#), Notification of Transportation of Supplies by Sea.

(End of provision)

#### **252.247-7023 Transportation of Supplies by Sea.**

*Basic.* As prescribed in [247.574](#)(b) and (b)(1), use the following clause:

##### TRANSPORTATION OF SUPPLIES BY SEA—BASIC (FEB 2019)

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

“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

“Foreign-flag vessel” means any vessel that is not a U.S.-flag vessel.

“Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

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

“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

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(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

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

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

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

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

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

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

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

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

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- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

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

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

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(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
TOTAL			

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

(h) If the Contractor indicated in response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor shall—

- (1) Notify the Contracting Officer of that fact; and
- (2) Comply with all the terms and conditions of this clause.

(i) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (i), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

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

(End of clause)

*Alternate I.* As prescribed in [247.574\(b\)](#) and (b)(2), use the following clause, which uses a different paragraph (b) than the basic clause:

#### TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE I (FEB 2019)

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

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“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

“Foreign-flag vessel” means any vessel that is not a U.S.-flag vessel.

“Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

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

“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

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

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

(i) Noncommercial items; or

(ii) Commercial items that—

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

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations (Note: This contract requires shipment of commercial items in direct support of U.S.

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military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations); or

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

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

- (1) U.S.-flag vessels are not available for timely shipment;
- (2) The freight charges are inordinately excessive or unreasonable; or
- (3) Freight charges are higher than charges to private persons for transportation of like goods.

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

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;

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- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

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

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

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
<b>TOTAL</b>			

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

(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies; however, after the award of this contract, the Contractor learns that supplies will be transported by sea, the Contractor—

- (1) Shall notify the Contracting Officer of that fact; and

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(2) Hereby agrees to comply with all the terms and conditions of this clause.

(i) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (i), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

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

(End of clause)

*Alternate II.* As prescribed in [247.574](#)(b) and (b)(3), use the following clause, which uses a different paragraph (b) than the basic clause:

#### TRANSPORTATION OF SUPPLIES BY SEA—ALTERNATE II (FEB 2019)

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

“Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

“Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

“Foreign-flag vessel” means any vessel that is not a U.S.-flag vessel.

“Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

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

“Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material;

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equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

“U.S.-flag vessel” means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

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

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

(i) Noncommercial items; or

(ii) Commercial items that—

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

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

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643 (Note: This contract requires transportation of commissary or exchange cargoes outside of the Defense Transportation System in accordance with 10 U.S.C. 2643).

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

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

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

(2) Required shipping date;

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- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

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

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all foreign-flag ocean transportation; or

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(4) Ocean transportation was used and some or all of the shipments were made on foreign-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
<b>TOTAL</b>			

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

(h) If the Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies, but the contractor learns after the award of the contract that supplies will be transported by sea, the Contractor shall notify the Contracting Officer of that fact.

(i) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (i), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

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

(End of clause)

#### **252.247-7024 [Reserved]**

#### **252.247-7025 Reflagging or Repair Work.**

As prescribed in [247.574\(c\)](#), use the following clause:

#### REFLAGGING OR REPAIR WORK (JUN 2005)

(a) *Definition.* “Reflagging or repair work,” as used in this clause, means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

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(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its outlying areas, if the reflagging or repair work is performed—

(1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

(2) Prior to acceptance of the vessel by the Government.

(End of clause)

#### **252.247-7026 Evaluation Preference for Use of Domestic Shipyards — Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.**

As prescribed in [247.574\(d\)](#), use the following provision:

#### EVALUATION PREFERENCE FOR USE OF DOMESTIC SHIPYARDS — APPLICABLE TO ACQUISITION OF CARRIAGE BY VESSEL FOR DOD CARGO IN THE COASTWISE OR NONCONTIGUOUS TRADE (NOV 2008)

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

“Covered vessel” means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 12101, 12132, and 55102), commonly referred to as “Jones Act”; 46 U.S.C. 12102, 12112, and 12119; and Section 2 of the Shipping Act, 1916 (46 U.S.C. 50501).

“Foreign shipyard” means a shipyard that is not a U.S. shipyard.

“Overhaul, repair, and maintenance work” means work requiring a shipyard period greater than or equal to 5 calendar days.

“Shipyard” means a facility capable of performing overhaul, repair, and maintenance work on covered vessels.

“U.S. shipyard” means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

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(2) Description and cost of qualifying shipyard work performed in U.S. shipyards.

(3) Description and cost of qualifying shipyard work performed in foreign shipyards and whether—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(4) Names of shipyards that performed the work.

(5) Inclusive dates of work performed.

(d) Offerors are responsible for submitting accurate information. The Contracting Officer—

(1) Will use the information to evaluate offers in accordance with the criteria specified in the solicitation; and

(2) Reserves the right to request supporting documentation if determined necessary in the proposal evaluation process.

(e) The Department of Defense will provide the information submitted in response to this provision to the congressional defense committees, as required by Section 1017 of Pub. L. 109-364.

(End of provision)

#### **252.247-7027 Riding Gang Member Requirements.**

As prescribed in [247.574](#)(e), use the following clause:

#### RIDING GANG MEMBER REQUIREMENTS (MAY 2018)

(a) *Definition.* “Riding gang member,” as used in this clause, has the same definition as “riding gang member” in title 46 U.S.C. 2101.

(b) *Requirements relating to riding gang members.* Notwithstanding 46 U.S.C. 8106, the Contractor shall ensure each riding gang member holds a valid U.S. Merchant Mariner's Document issued under 46 U.S.C. chapter 73, or a transportation security card issued under section 70105 of such title.

(c) *Exemption.*

(1) An individual is exempt from the requirements of paragraph (b) of this clause and shall not be treated as a riding gang member for the purposes of section 8106 of title 46, if that individual is on a vessel for purposes other than engaging in the operation or maintenance of the vessel and is—

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(i) One of the personnel who accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

(ii) One of the force protection personnel of the vessel;

(iii) A specialized repair technician; or

(iv) An individual who is otherwise required by the Secretary of Defense or designee to be aboard the vessel.

(2) Any individual who is exempt under paragraph (c)(1) of this clause must pass a DoD background check before going aboard the vessel.

(i) The Contractor shall—

(A) Render all necessary assistance to U.S. Armed Forces personnel with respect to the identification and screening of exempted individuals. This will require, at a minimum, the Contractor to submit the name and other biographical information necessary to the Government official specified in the contract for the purposes of conducting a background check; and

(B) Deny access or immediately remove any individual(s) from the vessel deemed unsuitable for any reason by the Government agency conducting the background checks. The Contractor agrees to replace any such individual promptly and require such replacements to fully comply with all screening requirements.

(ii) The head of the contracting activity may waive this requirement if the individual possesses a valid U.S. Merchant Mariner's Document issued under 46 U.S.C., chapter 73, or a transportation security card issued under section 70105 of such title.

(3) An individual exempted under paragraph (c)(1) of this clause is not treated as a riding gang member and shall not be counted as an individual in addition to the crew for the purposes of 46 U.S.C. 3304.

(End of clause)

#### **252.247-7028 Application for U.S. Government Shipping Documentation/Instructions.**

As prescribed in [247.207](#), use the following clause:

#### APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (JUN 2012)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall request bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(1) Transportation Officer, if named in the contract schedule; or

(2) Contract administration office.

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(b) If an automated system is available for shipment requests, use service/agency systems (e.g., Navy’s Global Freight Management–Electronic Transportation Acquisition (GFM-ETA) and Financial Air Clearance Transportation System (FACTS) Shipment Processing Module, Air Force’s Cargo Movement Operations System, DCMA’s Shipment Instruction Request (SIR) E-tool, and DLA’s Distribution Standard System Vendor Shipment Module in lieu of DD Form 1659.

(End of clause)