(Revised September 13, 2019)

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SUBPART 204.1--CONTRACT EXECUTION

(Revised February 23, 2006)

204.101 Contracting officer's signature.

Follow the procedures at PGI 204.101 for signature of contract documents.

SUBPART 204.2–CONTRACT DISTRIBUTION

(Revised September 13, 2019)

204.201 Procedures.

Follow the procedures at PGI 204.201 for the distribution of contracts and modifications.

(a) In lieu of the requirement at FAR 4.201(a), contracting officers shall distribute one signed copy or reproduction of the signed contract to the contractor.

204.203 Taxpayer identification information.

(b) The procedure at FAR 4.203(b) does not apply to contracts that include the provision at FAR 52.204-7, System for Award Management. The payment office obtains the taxpayer identification number and the type of organization from the System for Award Management database.

204.270 Electronic Data Access.

204.270-1 Policy.

(a) The Electronic Data Access (EDA) system, an online repository for contractual instruments and supporting documents, is DoD's primary tool for electronic distribution of contract documents and contract data. Contract attachments shall be uploaded to EDA, except for contract attachments that are classified, are too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act, or cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Section J (or similar location when the Uniform Contract Format is not used) shall include the annotation "provided under separate cover" for any attachment not uploaded to EDA.

(b) Agencies are responsible for ensuring the following when posting documents, including contractual instruments, to EDA—

(1) The timely distribution of documents; and

(2) That internal controls are in place to ensure that—

(i) The electronic version of a contract document in EDA is an accurate representation of the contract; and

(ii) The contract data in EDA is an accurate representation of the underlying contract.

204.270-2 Procedures.

(b) The procedures at PGI 204.270-2(b) provide details on how to record the results of data verification in EDA. When these procedures are followed, contract documents and data in EDA are an accurate representation of the contract and therefore may be used for audit purposes.

(c) The procedures at PGI 204.270-2(c) provide details on the creation and processing of contract deficiency reports, which are used to correct problems with contracts distributed in EDA.

SUBPART 204.4–SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

(Revised April 1, 2019)

204.402 General.
DoD employees or members of the Armed Forces who are assigned to or visiting a contractor facility and are engaged in oversight of an acquisition program will retain control of their work products, both classified and unclassified (see PGI 204.402).

204.403 Responsibilities of contracting officers.

(1) Contracting officers shall ensure that solicitations comply with PGI 204.403(1).

(2) For additional guidance on determining a project to be fundamental research in accordance with 252.204-7000(a)(3), see PGI 204.403(2).

204.404 Contract clause.

204.404-70 Additional contract clauses.

(a) Use the clause at 252.204-7000, Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

(b) Use the clause at 252.204-7003, Control of Government Personnel Work Product, in all solicitations and contracts.

204.470 U.S.-International Atomic Energy Agency Additional Protocol.

204.470-1 General.
Under the U.S.-International Atomic Energy Agency Additional Protocol (U.S.-IAEA AP), the United States is required to declare a wide range of public and private nuclear-related activities to the IAEA and potentially provide access to IAEA inspectors for verification purposes.

204.470-2 National security exclusion.

(a) The U.S.-IAEA AP permits the United States unilaterally to declare exclusions from inspection requirements for activities, or locations or information associated with such activities, with direct national security significance.

(b) In order to ensure that all relevant activities are reviewed for direct national security significance, both current and former activities, and associated locations or information, are to be considered for applicability for a national security exclusion.

(c) If a DoD program manager receives notification from a contractor that the contractor is required to report any of its activities in accordance with the U.S.-IAEA AP, the 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 application of the national security exclusion at that location to exclude access by the IAEA, 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.

204.470-3 Contract clause.
Use the clause at 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, in solicitations and contracts for research and development or major defense acquisition programs involving—

(a) Any fissionable materials (e.g., uranium, plutonium, neptunium, thorium, americium);

(b) Other radiological source materials; or

(c) Technologies directly related to nuclear power production, including nuclear or radiological waste materials.

SUBPART 204.6–CONTRACT REPORTING

(Revised July 29, 2009)

204.602 General.
See PGI 204.602 for additional information on the Federal Procurement Data System (FPDS) and procedures for resolving technical or policy issues relating to FPDS.

204.604 Responsibilities.

(1) The process for reporting contract actions to FPDS should, where possible, be automated by incorporating it into contract writing systems.

(2) Data in FPDS is stored indefinitely and is electronically retrievable. Therefore, the contracting officer may reference the contract action report (CAR) approval date in the associated Government contract file instead of including a paper copy of the electronically submitted CAR in the file. Such reference satisfies contract file documentation requirements of FAR 4.803(a).

(3) By December 15th of each year, the chief acquisition officer of each DoD component required to report its contract actions shall submit to the Director, Defense Procurement and Acquisition Policy, its annual certification and data validation results for the preceding fiscal year in accordance with the DoD Data Improvement Plan requirements at http://www.acq.osd.mil/dpap/pdi/eb. The Director, Defense Procurement and Acquisition Policy, will submit a consolidated DoD annual certification to the Office of Management and Budget by January 5th of each year.

204.606 Reporting data.
In addition to FAR 4.606, follow the procedures at PGI 204.606 for reporting data to FPDS.

SUBPART 204.8–CONTRACT FILES

(Revised September 13, 2019)

204.802 Contract files.

(a) Any document posted to the Electronic Data Access (EDA) system is part of the contract file and is accessible by multiple parties, including the contractor. Do not include in EDA contract documents that are classified, too sensitive for widespread distribution (e.g., personally identifiable information and Privacy Act and Health Insurance Portability and Accountability Act), or attachments that cannot be practicably converted to electronic format (e.g., samples, drawings, and models). Inclusion of any document in EDA other than contracts, modifications, and orders is optional.

(f) A photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date.

204.804 Closeout of contract files.

(1) Except as provided in paragraph (3) of this section, contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

(2) The head of the contracting activity shall assign the highest priority to close out of contracts awarded for performance in a contingency area. Heads of contracting activities shall monitor and assess on a regular basis the progress of contingency contract closeout activities and take appropriate steps if a backlog occurs. For guidance on the planning and execution of closing out such contracts, see PGI 207.105(b)(20)(C)(8) and PGI 225.373(e).

(3)(i) In accordance with section 836 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328) and section 824 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), contracting officers may close out contracts or groups of contracts through issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action in accordance with FAR 4.804-5(a)(3) through (15), as appropriate, if each contract—

(A) Was entered into on a date that is at least 17 fiscal years before the current fiscal year;

(B) Has no further supplies or services due under the terms of the contract; and

(C) Has been determined by a contracting official, at least one level above the contracting officer, to be not otherwise reconcilable, because—

(*1*) The contract or related payment records have been destroyed or lost; or

(*2*) Although contract or related payment records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.

(ii) Any contract or group of contracts meeting the requirements of paragraph (3)(i) of this section may be closed out through a negotiated settlement with the contractor. Except as provided in paragraph (3)(ii)(B) of this section, the contract closeout process shall include a bilateral modification of the affected contract, including those contracts that are closed out in accordance with a negotiated settlement.

(A) For a contract or groups of contracts, the contracting officer shall prepare a negotiation settlement memorandum that describes how the requirements of paragraph (3)(i) of this section have been met.

(B) For a group of contracts, a bilateral modification of at least one contract shall be made to reflect the negotiated settlement for a group of contracts, and unilateral modifications may be made, as appropriate, to other contracts in the group to reflect the negotiated settlement.

(iii) For contract closeout actions under paragraph (3) of this section, remaining contract balances—

(A) May be offset with balances in other contract line items within the same contract, regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation obligated to fund such contract line item has closed; and

(B) May be offset with balances on other contracts, regardless of the year or type of appropriations obligated to fund each contract and regardless of whether such appropriations have closed.

(iv) USD(A&S) is authorized to waive any provision of acquisition law or regulation in order to carry out the closeout procedures authorized in paragraph (3)(i) of this section (see procedures at PGI 204.804(3)(iv)).

204.805 Disposal of contract files.

(1) The sources of the period for which contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulations Council. Forward requests for deviations to both the Government Accountability Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(4) Duplicate or working contract files should contain no originals of materials that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to certified cost or pricing data (see FAR 15.403-4) , for six years. If it is impossible to determine the final payment date in order to measure the six-year period, retain the files for nine years.

SUBPART 204.9—TAXPAYER IDENTIFICATION NUMBER INFORMATION

(Revised July 29, 2009)

204.902 General.

(b) DoD uses the Federal Procurement Data System (FPDS) to meet these reporting requirements.

SUBPART 204.11—SYSTEM FOR AWARD MANAGEMENT

(Revised May 30, 2018)

204.1103 Procedures.

See PGI 204.1103 for helpful information on navigation and data entry in the System for Award Management (SAM) database.

(1) On contract award documents, use the contractor's legal or "doing business as" name and physical address information as recorded in the SAM database at the time of award.

(2) When making a determination to exercise an option, or at any other time before issuing a modification other than a unilateral modification making an administrative change, ensure that—

(i) The contractor's record is active in the SAM database; and

(ii) The contractor's Data Universal Numbering System (DUNS) number, Commercial and Government Entity (CAGE) code, name, and physical address are accurately reflected in the contract document.

(3) At any time, if the DUNS number, CAGE code, contractor name, or physical address on a contract no longer matches the information on the contractor's record in the SAM database, the contracting officer shall process a novation or change-of-name agreement, or an address change, as appropriate.

(4) See PGI 204.1103 for additional requirements relating to use of information in the SAM database.

(5) On contractual documents transmitted to the payment office, provide the CAGE code, instead of the DUNS number or DUNS+4 number, in accordance with agency procedures.

SUBPART 204.12—ANNUAL REPRESENTATIONS AND CERTIFICATIONS

(Revised June 28, 2019)

204.1202 Solicitation provision.

When using the provision at FAR 52.204-8, Annual Representations and Certifications—

(1) Use the provision with 252.204-7007, Alternate A, Annual Representations and Certifications; and

(2) When the provision at FAR 52.204-7, System for Award Management, is included in the solicitation, do not include separately in the solicitation the following provisions, which are included in DFARS 252.204-7007:

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

(ii) 252.209-7003, Reserve Officer Training Corps and Military Recruiting on Campus—Representation.

(iii) 252.216-7008, Economic Price Adjustment–Wage Rates or Material Prices Controlled by a Foreign Government—Representation.

(iv) 252.225-7000, Buy American—Balance of Payments Program Certificate.

(v) 252.225-7020, Trade Agreements Certificate.

(vi) 252.225-7031, Secondary Arab Boycott of Israel.

(vii) 252.225-7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate.

(viii) 252.225-7042, Authorization to Perform.

(ix) 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations.

(x) 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

(xi) 252.229-7012, Tax Exemptions (Italy)—Representation.

(xii) 252.229-7013, Tax Exemptions (Spain)—Representation.

(xiii) 252.247-7022, Representation of Extent of Transportation by Sea.

SUBPART 204.16—UNIFORM PROCUREMENT INSTRUMENT IDENTIFIERS

(Revised September 13, 2019)

204.1601 Policy.

(a) *Establishment of a Procurement Instrument Identifier (PIID).* Do not reuse a PIID once it has been assigned. Do not assign the same PIID to more than one task or delivery order, even if they are issued under different base contracts or agreements.

(b) *Transition of PIID numbering.* Effective October 1, 2016, all DoD components shall comply with the PIID numbering requirements of FAR subpart 4.16 and this subpart for all new solicitations, contracts, orders, and agreements issued, and any amendments and modifications to those new actions. See also PGI 204.1601(b).

(c) *Change in the PIID after its assignment.* When a PIID is changed after contract award, the new PIID is known as a continued contract.

(i) A continued contract—

(A) Does not constitute a new procurement;

(B) Incorporates all prices, terms, and conditions of the predecessor contract effective at the time of issuance of the continued contract;

(C) Operates as a separate contract independent of the predecessor contract once issued; and

(D) Shall not be used to evade competition requirements, expand the scope of work, or extend the period of performance beyond that of the predecessor contract.

(ii) When issuing a continued contract, the contracting officer shall—

(A) Issue an administrative modification to the predecessor contract to clearly state that—

(*1*) Any future awards provided for under the terms of the predecessor contract (e.g., issuance of orders or exercise of options) will be accomplished under the continued contract; and

(*2*) Supplies and services already acquired under the predecessor contract shall remain solely under that contract for purposes of Government inspection, acceptance, payment, and closeout; and

(B) Follow the procedures at PGI 204.1601(c).

204.1603 Procedures.

(a) *Elements of a PIID.* DoD-issued PIIDs are thirteen characters in length. Use only alpha-numeric characters, as prescribed in FAR 4.1603 and this subpart. Do not use the letter I or O in any part of the PIID.

(3) *Position 9.*

(A) DoD will use three of the letters reserved for departmental or agency use in FAR 4.1603(a)(3) in this position as follows:

(*1*) Use M to identify purchase orders and task or delivery orders issued by the enterprise FedMall system.

(*2*) Use S to identify broad agency announcements.

(*3*) Use T to identify automated requests for quotations by authorized legacy contract writing systems. See PGI 204.1603(a)(3)(A)(*3*) for the list of authorized systems.

(B) Do not use other letters identified in FAR 4.1603(a)(3) as "Reserved for future Federal Governmentwide use" or "Reserved for departmental or agency use" in position 9 of the PIID.

(C) Do not use the letter C or H for contracts or agreements with provisions for orders or calls.

(4) *Positions 10 through 17.* In accordance with FAR 4.1603(a)(4), DoD-issued PIIDs shall only use positions 10 through 13 to complete the PIID. Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in FAR 4.1603(a)(3). DoD components assign such series of PIID numbers sequentially. A DoD component may reserve blocks of numbers or alpha-numeric numbers for use by its various activities.

(b) *Elements of a supplementary PIID.* In addition to the supplementary PIID numbering procedures in FAR 4.1603(b), follow the procedures contained in paragraphs (b)(2)(ii)(*1*) and (*2*) of this section. See PGI 204.1603(b) for examples of proper supplementary PIID numbering.

(2)(ii) *Positions 2 through 6.* In accordance with FAR 4.1603(b)(2)(ii), DoD-issued supplementary PIIDs shall, for positions 2 through 6 of modifications to contracts and agreements, comply with the following:

(*1*) *Positions 2 and 3.* These two digits may be either alpha or numeric characters, except—

(*i*) Use K, L, M, N, P, and Q only in position 2, and only if the modification is issued by the Air Force and is a provisioned item order;

(*ii*) Use S only in position 2, and only to identify modifications issued to provide initial or amended shipping instructions when—

(*a*) The contract has either FOB origin or destination delivery terms; and

(*b*) The price changes;

(*iii*) Use T, U, V, W, X, or Y only in position 2, and only to identify modifications issued to provide initial or amended shipping instructions when—

(*a*) The contract has FOB origin delivery terms; and

(*b*) The price does not change; and

(*iv*) Use Z only in position 2, and only to identify a modification which definitizes a letter contract or a previously issued undefinitized modification.

(*2*) *Positions 4 through 6*. These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (b)(2)(ii) of this section.

204.1670 Cross reference to Federal Procurement Data System.

Detailed guidance on mapping PIID and supplementary PIID numbers stored in the Electronic Data Access system to data elements reported in the Federal Procurement Data System can be found in PGI 204.1670.

204.1671 Order of application for modifications.

(a) Circumstances may exist in which the numeric order of the modifications to a contract is not the order in which the changes to the contract actually take effect.

(b) In order to determine the sequence of modifications to a contract or order, the modifications will be applied in the following order—

(1) Modifications will be applied in order of the effective date on the modification;

(2) In the event of two or more modifications with the same effective date, modifications will be applied in signature date order; and

(3) In the event of two or more modifications with the same effective date and the same signature date, procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.

SUBPART 204.18—COMMERCIAL AND GOVERNMENT ENTITY CODE

(Added December 11, 2014)

204.1870 Procedures.

Follow the procedures and guidance at PGI 204.1870 concerning Commercial and Government Entity (CAGE) codes and CAGE file maintenance.

SUBPART 204.70

(Removed February 26, 2016)

SUBPART 204.71–UNIFORM CONTRACT LINE ITEM NUMBERING SYSTEM

(Revised May 30, 2018)

204.7100 Scope.

This subpart prescribes policies and procedures for assigning contract line item numbers.

204.7101 Definitions.

"Accounting classification reference number (ACRN)" means any combination of a two position alpha/numeric code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.

"Attachment" means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.

"Definitized item," as used in this subpart, means an item for which a firm price has been established in the basic contract or by modification.

"Exhibit" means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term shall not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.

"Nonseverable deliverable," as used in this subpart, means a deliverable item that is a single end product or undertaking, entire in nature, that cannot be feasibly subdivided into discrete elements or phases without losing its identity.

"Undefinitized item," as used in this subpart, means an item for which a price has not been established in the basic contract or by modification.

204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

(1) Solicitations;

(2) Solicitation line and subline item numbers;

(3) Contracts as defined in FAR Subpart 2.1;

(4) Contract line and subline item numbers;

(5) Exhibits;

(6) Exhibit line items; and

(7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts where separate contract line item numbers are assigned, unless—

(1) The contract is an indefinite-delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(2) The contract is a communications service authorization issued by the Defense Information Systems Agency's Defense Information Technology Contracting Organization.

204.7103 Contract line items.

Follow the procedures at PGI 204.7103 for establishing contract line items.

204.7103-1 Criteria for establishing.
Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items shall have all four of the following characteristics; however, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing—

(1) *Single unit price.* The item shall have a single unit price or a single total price, except—

(i) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter NSP instead of the unit price;

(ii) When there are associated subline items, established for other than informational reasons, and those subline items are priced in accordance with 204.7104;

(iii) When the items or services are being acquired on a cost-reimbursement contract;

(iv) When the contract is for maintenance and repair services (e.g., a labor hour contract) and firm prices have been established for elements of the total price of an item but the actual number and quantity of the elements are not known until performance. The contracting officer may structure these contracts to reflect a firm or estimated total amount for each line item;

(v) When the contract line item is established to refer to an exhibit or an attachment (if management needs dictate that a unit price be entered, the price shall be set forth in the item description block and enclosed in parentheses); or

(vi) When the contract is an indefinite delivery type contract and provides that the price of an item shall be determined at the time a delivery order is placed and the price is influenced by such factors as the quantity ordered (e.g., 10-99 @ $1.00, 100-249 @ $.98, 250+ @ $.95), the destination, the FOB point, or the type of packaging required.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(iii) This requirement does not apply if there are associated subline items, established for other than informational reasons, and those subline items include the actual detailed identification in accordance with 204.7104. Where this exception applies, use a general narrative description instead of the contract item description.

(3) *Separate delivery schedule.* Each contract line item or service shall have its own delivery schedule, period of performance, or completion date expressly stated ("as required" constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(4) *Single accounting classification citation.*

(i) Each contract line item shall reference a single accounting classification citation except as provided in paragraph (a)(4)(ii) of this subsection.

(ii) The use of multiple accounting classification citations for a contract line item is authorized in the following situations:

(A) A single, nonseverable deliverable to be paid for with R&D or other funds properly incrementally obligated over several fiscal years in accordance with DoD policy;

(B) A single, nonseverable deliverable to be paid for with different authorizations or appropriations, such as in the acquisition of a satellite or the modification of production tooling used to produce items being acquired by several activities; or

(C) A modification to an existing contract line item for a nonseverable deliverable that results in the delivery of a modified item(s) where the item(s) and modification are to be paid for with different accounting classification citations.

(iii) When the use of multiple accounting classification citations is authorized for a single contract line item, establish informational subline items for each accounting classification citation in accordance with 204.7104-1(a).

(b) All subline items and exhibit line items under one contract line item shall be the same contract type as the contract line item.

(c) For a contract that contains a combination of fixed-price line items, time-and-materials/labor-hour line items, and/or cost-reimbursement line items, identify the contract type for each contract line item in Section B, Supplies or Services and Prices/Costs, to facilitate appropriate payment.

(d) Exhibits may be used as an alternative to putting a long list of contract line items in the schedule. If exhibits are used, create a contract line item citing the exhibit's identifier. See 204.7105.

(e) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture of items, a single line item or subline item may be used for the lot.

(f) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate line items must conform to the requirements of paragraph (a) of this subsection.

(g) Certain commercial items and initial provisioning spares for weapons systems are requested and subsequently solicited using units of measure such as kit, set, or lot. However, there are times when individual items within that kit, set, or lot are not grouped and delivered in a single shipment. This creates potential contract administration issues with inspection, acceptance, and payment. In such cases, solicitations should be structured to allow offerors to provide information about products that may not have been known to the Government prior to solicitation and propose an alternate line item structure as long as the alternate is consistent with the requirements of 204.71, which provides explicit guidance on the use of contract line items and subline items, and with PGI 204.71.

204.7103-2 Numbering procedures.
Follow the procedures at PGI 204.7103-2 for numbering contract line items.

204.7104 Contract subline items.

204.7104-1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which consist of more than one item that requires separate identification.

(a) *Informational subline items.*

(1) This type of subline item identifies information that relates directly to the contract line item and is an integral part of it (e.g., parts of an assembly or parts of a kit). These subline items shall not be scheduled separately for delivery, identified separately for shipment or performance, or priced separately for payment purposes.

(2) The informational subline item may include quantities, prices, or amounts, if necessary to satisfy management requirements. However, these elements shall be included within the item description in the supplies/services column and enclosed in parentheses to prevent confusing them with quantities, prices, or amounts that have contractual significance. Do not enter these elements in the quantity and price columns.

(3) Informational subline items shall be used to identify each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103-1(a)(4)(ii)).

(b) *Separately identified subline items.*

(1) Subline items will be used instead of contract line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items shall be used when items bought under one contract line item number—

(i) Are to be paid for from more than one accounting classification. A subline item shall be established for the quantity associated with the single accounting classification citation. Establish a line item rather than a subline item if it is likely that a subline item may be assigned additional accounting classification citations at a later date. Identify the funding as described in 204.7104-1(a)(3);

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the contract line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which—

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Each separately identified contract subline item shall have its own—

(i) Delivery schedule, period of performance, or completion date;

(ii) Unit price or single total price or amount (not separately priced (NSP) is acceptable as an entry for price or amount if the price is included in another subline item or a different contract line item). This requirement does not apply—

(A) If the subline item was created to refer to an exhibit or an attachment. If management needs dictate that a unit price be entered, the price shall be set forth in the item description block of the schedule and enclosed in parentheses; or

(B) In the case of indefinite delivery contracts described at 204.7103-1(a)(1)(vi).

(iii) Identification (e.g., NSN, item description, manufacturer's part number, scope of work, description of services).

(3) Unit prices and extended amounts.

(i) The unit price and total amount for all subline items may be entered at the contract line item number level if the unit price for the subline items is identical. If there is any variation, the subline item unit prices shall be entered at the subline item level only.

(ii) The unit price and extended amounts may be entered at the subline items level.

(iii) The two methods in paragraphs (b)(3)(i) and (ii) of this subsection shall not be combined in a contract line item.

(iv) When the price for items not separately priced is included in the price of another subline item or contract line item, it may be necessary to withhold payment on the priced subline item until all the related subline items that are not separately priced have been delivered. In those cases, use the clause at 252.204-7002, Payment for Subline Items Not Separately Priced.

204.7104-2 Numbering procedures.
Follow the procedures at PGI 204.7104-2 for numbering contract subline items.

204.7105 Contract exhibits and attachments.
Follow the procedures at PGI 204.7105 for use and numbering of contract exhibits and attachments.

204.7106 Contract modifications.

(a) If new items are added, assign new contract line or subline item numbers or exhibit line item numbers, in accordance with the procedures established at 204.7103, 204.7104, and 204.7105.

(b) *Modifications to existing contract line items or exhibit line items.*

(1) If the modification relates to existing contract line items or exhibit line items, the modification shall refer to those item numbers.

(2) If the contracting officer decides to assign new identifications to existing contract or exhibit line items, the following rules apply—

(i) *Definitized and undefinitized items*.

(A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item or subline item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract line item or subline item or exhibit line item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract line item or subline item or exhibit line item number shall remain with the unchanged quantity. Assign the changed quantity the next available number.

(ii) *Undefinitized items*. In addition to the rules in paragraph (b)(2)(i), the following additional rules apply to undefinitized items—

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract line item or subline item or exhibit line item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract line item or subline item or exhibit line item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract line item or subline item or exhibit line item, but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract line item or subline item or exhibit line item number. Assign the changed portion the next available number.

(3) If the modification will decrease the amount obligated—

(i) There shall be coordination between the administrative and procuring contracting offices before issuance of the modification; and

(ii) The contracting officer shall not issue the modification unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the Government.

204.7107 Contract accounting classification reference number (ACRN) and agency accounting identifier (AAI).
Traceability of funds from accounting systems to contract actions is accomplished using ACRNs and AAIs. Follow the procedures at PGI 204.7107 for use of ACRNs and AAIs.

204.7108 Payment instructions.
Follow the procedures at PGI 204.7108 for inclusion of payment instructions in contracts.

204.7109 Contract clause.

Use the clause at 252.204-7006, Billing Instructions, in solicitations and contracts if Section G includes—

(a) Any of the standard payment instructions at PGI 204.7108(d)(1) through (6); or

(b) Other payment instructions, in accordance with PGI 204.7108(d)(12), that require contractor identification of the contract line item(s) on the payment request.

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.

SUBPART 204.73—SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING

(Revised December 28, 2017)

204.7300 Scope.

(a) This subpart applies to contracts and subcontracts requiring contractors and subcontractors to safeguard covered defense information that resides in or transits through covered contractor information systems by applying specified network security requirements. It also requires reporting of cyber incidents.

(b) This subpart does not abrogate any other requirements regarding contractor physical, personnel, information, technical, or general administrative security operations governing the protection of unclassified information, nor does it affect requirements of the National Industrial Security Program.

204.7301 Definitions.

As used in this subpart—

"Adequate security" means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

"Contractor attributional/proprietary information" means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

"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.

"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 covered defense information is recorded, stored, or printed within a covered contractor information system.

"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-Non Commercial 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.

204.7302 Policy.

(a) Contractors and subcontractors are required to provide adequate security on all covered contractor information systems.

(b) Contractors and subcontractors are required to rapidly report cyber incidents directly to DoD at http://dibnet.dod.mil. Subcontractors provide the incident report number automatically assigned by DoD to the prime contractor. Lower-tier subcontractors likewise report the incident report number automatically assigned by DoD to their higher-tier subcontractor, until the prime contractor is reached.

(1) If a cyber incident occurs, contractors and subcontractors submit to DoD—

(i) A cyber incident report;

(ii) Malicious software, if detected and isolated; and

(iii) Media (or access to covered contractor information systems and equipment) upon request.

(2) Contracting officers shall refer to PGI 204.7303-4(c) for instructions on contractor submissions of media and malicious software.

(c) Information shared by the contractor may include contractor attributional/ proprietary information that is not customarily shared outside of the company, and that the unauthorized use or disclosure of such information could cause substantial

competitive harm to the contractor that reported the information. The Government shall protect against the unauthorized use or release of information that includes contractor attributional/proprietary information.

(d) A cyber incident that is reported by a contractor or subcontractor shall not, by itself, be interpreted as evidence that the contractor or subcontractor has failed to provide adequate security on their covered contractor information systems, or has otherwise failed to meet the requirements of the clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting. When a cyber incident is reported, the contracting officer shall consult with the DoD component Chief Information Officer/cyber security office prior to assessing contractor compliance (see PGI 204.7303-3(a)(3)). The contracting officer shall consider such cyber incidents in the context of an overall assessment of a contractor's compliance with the requirements of the clause at 252.204-7012.

(e) Support services contractors directly supporting Government activities related to safeguarding covered defense information and cyber incident reporting (e.g., forensic analysis, damage assessment, or other services that require access to data from another contractor) are subject to restrictions on use and disclosure of reported information.

204.7303 Procedures.
Follow the procedures relating to safeguarding covered defense information at PGI 204.7303.

204.7304 Solicitation provision and contract clauses.

(a) Use the provision at 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, except for solicitations solely for the acquisition of commercially available off-the-shelf (COTS) items.

(b) Use the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting.

(c) Use the clause at 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except for solicitations and contracts solely for the acquisition of COTS items.

SUBPART 204.74—DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS

(Revised May 10, 2016)

204.7400 Scope of subpart.

This subpart prescribes policies and procedures for the release and safeguarding of information to litigation support contractors. It implements the requirements at 10 U.S.C. 129d.

204.7401 Definitions.

As used in this subpart—

"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.

"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.

204.7402 Policy.

(a) Any release or disclosure of litigation information that includes sensitive information to a litigation support contractor, and the litigation support contractor's use and handling of such information, shall comply with the requirements of 10 U.S.C. 129d.

(b) To the maximum extent practicable, DoD will provide notice to an offeror or contractor submitting, delivering, or otherwise providing information to DoD in connection with an offer or performance of a contract that such information may be released or disclosed to litigation support contractors.

(c) Information that is publicly available without restriction, including publicly available solicitations for litigation support services, will not be protected from disclosure as litigation information.

(d) When sharing sensitive information with a litigation support contractor, contracting officers shall ensure that all other applicable requirements for handling and safeguarding the relevant types of sensitive information are included in the contract (e.g., FAR subparts 4.4 and 24.1; DFARS subparts 204.4 and 224.1).

204.7403 Solicitation provision and contract clauses.

(a) Use the provision at 252.204-7013, Limitations on the Use or Disclosure of Information by Litigation Support Offerors, in all solicitations for contracts that involve litigation support services, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

(b) Use the clause at 252.204-7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors, in all solicitations and contracts that involve litigation support services, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

(c) Use the clause at 252.204-7015, Notice of Authorized Disclosure of Information for Litigation Support, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

SUBPART 209.1–RESPONSIBLE PROSPECTIVE CONTRACTORS

(Revised September 13, 2019)

209.101 Definitions.

"Entity controlled by a foreign government," "foreign government," and "proscribed information" are defined in the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

209.104 Standards.

209.104-1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor's accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) *Ownership or control by the government of a country that is a state sponsor of terrorism*. (See 225.771.)

(ii) *Ownership or control by a foreign government when access to proscribed information is required.*

(A) Under 10 U.S.C. 2536(a), no DoD contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

(B) Whenever the contracting officer has a question about application of the provision at 252.209-7002, the contracting officer may seek advice from the Security Directorate, Office of the Deputy Under Secretary of Defense, Human Intelligence, Counterintelligence, and Security.

(C) In accordance with 10 U.S.C. 2536(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this subsection upon determining that the waiver is essential to the national security interests of the United States. The Secretary has delegated authority to grant this waiver to the Undersecretary of Defense for Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include:

(1) Identification of the proposed awardee, with a synopsis of its foreign ownership (include solicitation and other reference numbers to identify the action);

(2) General description of the acquisition and performance requirements;

(3) Identification of the national security interests involved and the ways in which award of the contract helps advance those interests;

(4) A statement as to availability of another entity with the capacity, capability and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

(5) A description of any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.

(D) In accordance with 10 U.S.C. 2536(b)(1)(B), the Secretary of Defense may, in the case of a contract awarded for environmental restoration, remediation, or waste management at a DoD facility, waive the prohibition in paragraph (g)(ii)(A) of this subsection upon—

(1) Determining that—

(i) The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

(ii) The entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(2) Notifying Congress of the decision to grant the waiver. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the appropriate Congressional committees.

209.104-4 Subcontractor responsibility.
Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104-70 Solicitation provision.
Use the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, in all solicitations, including those subject to the procedures in FAR part 13, when access to proscribed information is necessary for contract performance. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.209-7002 in the solicitation.

209.105 Procedures.

209.105-1 Obtaining information.

(1) For guidance on using the Exclusion section of the System for Award Management, see PGI 209.105-1.

(2) A satisfactory performance record is a factor in determining contractor responsibility (see FAR 9.104-1(c)). One source of information relating to contractor performance is Contractor Performance Assessment Reporting System (CPARS), available at https://ww.cpars.gov/. Information relating to contract terminations for cause and for default is also available through the Federal Awardee Performance and Integrity Information System (FAPIIS) module of CPARS, available at https://www.fapiis.gov. (see subpart 42.15). This termination information is just one consideration in determining contractor responsibility.

209.105-2 Determinations and documentation.

(a) The contracting officer shall submit a copy of a determination of nonresponsibility to the appropriate debarring and suspending official listed in 209.403.

209.105-2-70 Inclusion of determination of contractor fault in Federal Awardee Performance and Integrity Information System (FAPIIS).

If the contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts and the DoD appointing official that requested a DoD investigation makes a final determination that a contractor's or subcontractor's gross negligence or reckless disregard for the safety of civilian or military personnel of the Government caused serious bodily injury or death of such personnel, the contracting officer shall enter in FAPIIS the appropriate information regarding such determination within three days of receiving notice of the determination, pursuant to section 834 of the National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383). Information posted in FAPIIS regarding such determinations will be publicly available.

209.106 Preaward surveys.

When requesting a preaward survey, follow the procedures at PGI 209.106.

See DoD Class Deviation 2012-O0004, Prohibition Against Contracting with Corporations That Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued January 23, 2012. This deviation is effective until incorporated in the FAR or otherwise rescinded.

See DoD Class Deviation 2012-O0007, Prohibition Against Contracting with Corporations that have a Felony Conviction under Federal or State Law, issued March 9, 2012. This deviation is effective for contract actions issued using DoD funds appropriated by the Consolidated Appropriations Act, 2012 (Pub. L. 112-74).

See DoD Class Deviation 2013-O0006, Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued January 22, 2013. This deviation is effective for contract actions issued using DoD funds appropriated by the Continuing Appropriations Resolution, 2013 (Pub. L. 112-175).

See DoD Class Deviation 2013-O0010, Prohibition Against Using Fiscal Year 2013 Funds to Contract with Corporations that have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued April 8, 2013. This deviation is effective for contract actions issued using DoD funds appropriated by the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6).

See DoD Class Deviation 2014-O0004, Prohibition Against Using FY 2014 Funds to Contract with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued February 21, 2014. This deviation is effective for contract actions issued using DoD funds appropriated by the Continuing Appropriations Act, 2014 (Pub. L. 113-46).

See DoD Class Deviation 2014-O0009, Prohibition Against Using FY 2014 Funds to Contract with Corporations that Have an Unpaid Delinquent Tax Liability or a Felony Conviction under Federal Law, issued February 21, 2014. This deviation is effective for contract actions issued using DoD funds appropriated by the Department of Defense Appropriations Act, 2014, and the Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2014 (Pub. L. 113-76, Divisions C and J, enacted January 17, 2014).

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

(Revised September 13, 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 and Information Matters.*

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

(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 Supplier Performance Risk System 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, 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.

(*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 NDAAs 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

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).

(*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 in225.372-2.

(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.

(FF) Use the clause at 252.225-7052, Restriction on the Acquisition of Certain Magnets and Tungsten, as prescribed in 225.7018-5.

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

(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.

(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 213.1--PROCEDURES

(Revised September 13, 2019)

213.101 General.

Structure awards valued above the micro-purchase threshold (e.g., contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

213.104 Promoting competition.

For information on the various approaches that may be used to competitively fulfill DoD requirements, see PGI 213.104.

213.106-1 Soliciting competition.

(a)(2) 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.

213.106-1-70 Soliciting competition – tiered evaluation of offers.

See limitations on the use of tiered evaluation of offers at 215.203-70.

213.106-2 Evaluation of quotations or offers.

(b)(i) For competitive solicitations for supplies using FAR part 13 simplified acquisition procedures, including acquisitions valued at less than or equal to $1 million under the authority at FAR subpart 13.5, the contracting officer shall—

(A) Consider data available in the statistical reporting module of the Supplier Performance Risk System (SPRS) regarding the supplier's past performance history for the Federal supply class (FSC) and product or service code (PSC) of the supplies being purchased. Procedures for the use of SPRS in the evaluation of quotations or offers are provided in the SPRS User's Manual available under the references section of the SPRS website at https://www.sprs.csd.disa.mil/reference.htm;

(B) Ensure the basis for award includes an evaluation of each supplier's past performance history in SPRS for the FSC and PSC of the supplies being purchased; and

(C) In the case of a supplier without a record of relevant past performance history in SPRS for the FSC or PSC of the supplies being purchased, the supplier may not be evaluated favorably or unfavorably for its past performance history.

213.106-2-70 Solicitation provision.

Use the provision at 252.213-7000, Notice to Prospective Suppliers on the Use of Supplier Performance Risk System in Past Performance Evaluations, in competitive solicitations for supplies when using FAR part 13 simplified acquisition procedures, including competitive solicitations using FAR part 12 procedures for the acquisition of commercial items and acquisitions valued at less than or equal to $1 million under the authority at FAR subpart 13.5.

SUBPART 216.5–INDEFINITE-DELIVERY CONTRACTS

(Revised September 13, 2019)

216.501-2-70 General.

(a)(i) For items with a shelf-life of less than six months, consider the use of indefinite-delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within three working days of the order.

(b) See 217.204(e)(i) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

216.504 Indefinite-quantity contracts.

(c) *Multiple award preference—*

(1) *Planning the acquisition.*

(ii)(D)*(1)* The senior procurement executive has the authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)*(1)*.

(*i*) In accordance with section 816 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), when making the determination at FAR 16.504(c)(1)(ii)(D)(*1*)(*i*), the senior procurement executive shall determine that the task or delivery orders expected under the contract are so integrally related that only a single source can "efficiently perform the work," instead of "reasonably perform the work" as required by the FAR.

(*2*) The congressional notification requirement at FAR 16.504(c)(1)(ii)(D)(2) does not apply to DoD.

216.505 Ordering.

(1) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with subpart 217.7 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

(2) Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

(b)(2) *Exceptions to the fair opportunity process.* For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority at FAR 16.505(b)(2)(i)(B) or (C), follow the procedures at PGI 216.505(b)(2).

216.505-70 Orders under multiple award contracts.

(a) If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the contracting officer shall follow the procedures at 215.371.

(b) See PGI 216.505-70 for guidance regarding minimum labor category qualifications for orders issued under multiple-award services contracts.

216.506 Solicitation provisions and contract clauses.

(a) Insert the clause at 252.216-7006, Ordering, in lieu of the clause at FAR 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(S-70) Use the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.371-6 and 215.408(3), respectively.

SUBPART 217.74--UNDEFINITIZED CONTRACT ACTIONS

(Revised September 13, 2019)

217.7400 Scope.
This subpart prescribes policies and procedures implementing 10 U.S.C. 2326.

217.7401 Definitions.
As used in this subpart—

"Contract action" means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It includes task orders and delivery orders.

(3) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value engineering change proposals, and over and above work requests as described in subpart 217.77. For policy relating to definitization of change orders, see 243.204-70.

"Definitization" means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

"Qualifying proposal" means a proposal that contains sufficient information to enable DoD to conduct meaningful analyses and audits of the information contained in the proposal.

"Undefinitized contract action" means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun. For policy relating to definitization of change orders, see 243.204-70.

217.7402 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart. However, the contracting officer shall apply the policy and procedures to them to the maximum extent practicable (also see paragraph (b) of this section):

(1) Purchases at or below the simplified acquisition threshold.

(2) Special access programs.

(3) Congressionally mandated long-lead procurement contracts.

(b) If the contracting officer determines that it is impracticable to adhere to the procedures of this subpart for a particular contract action that falls within one of the categories in paragraph (a) of this section, the contracting officer shall provide prior

notice, through agency channels, electronically via email to the Principal Director, Defense Pricing and Contracting (Contract Policy), at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

217.7403 Policy.
DoD policy is that undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

217.7404 Limitations.
See PGI 217.7404 for additional guidance on obtaining approval to authorize use of an undefinitized contact action, documentation requirements, and other limitations on their use.

(a) *Foreign military sales contracts.*

(1) A contracting officer may not enter into a UCA for a foreign military sale unless—

(i) The UCA provides for agreement upon contractual terms, specifications, and price by the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal; and

(ii) The contracting officer obtains approval from the head of the contracting activity to enter into a UCA in accordance with 217.7404-1.

(2) The head of the contracting activity may waive the requirements of paragraph (a)(1) of this section, if a waiver is necessary in order to support any of the following operations:

(i) A contingency operation.

(ii) A humanitarian or peacekeeping operation.

(b) *Unilateral definitization by a contracting officer.* Any UCA with a value greater than $50 million may not be unilaterally definitized until—

(1) The earlier of—

(i) The end of the 180-day period, beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(ii) The date on which the amount of funds expended under the contractual action is equal to more than 50 percent of the negotiated overall not-to-exceed price for the contractual action;

(2) The head of the contracting activity, without power of redelegation, approves the definitization in writing;

(3) The contracting officer provides a copy of the written approval to the contractor; and

(4) A period of 30 calendar days has elapsed after the written approval is provided to the contractor.

217.7404-1 Authorization.
The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

217.7404-2 Price ceiling.
UCAs shall include a not-to-exceed price.

217.7404-3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after the contractor submits a qualifying proposal. This date may not be extended beyond an additional 90 days without a written determination by the head of the contracting activity without power of redelegation, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment that it is in the best interests of the military department or the defense agency, the combatant command, or the Department of Defense, respectively, to continue the action; or

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

217.7404-4 Limitations on obligations.

(a) The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

(b) In determining the appropriate amount to obligate, the contracting officer shall assess the contractor's proposal for the undefinitized period and shall obligate funds only in an amount consistent with the contractor's requirements for the undefinitized period.

217.7404-5 Exceptions.

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404(a), 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation; or

(2) A humanitarian or peacekeeping operation.

217.7404-6 Allowable profit.
When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price. However, if a contractor submits a qualifying proposal to definitize a UCA, and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal, the profit allowed on the contract shall accurately reflect the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal;

(b) Any reduced cost risk to the contractor for costs expected to be incurred during performance of the remainder of the contract after negotiation of the final price; and

(c) The requirements at 215.404-71-3(d)(2). The risk assessment shall be documented in the price negotiation memorandum.

217.7405 Plans and reports.

(a) To provide for enhanced management and oversight of UCAs, departments and agencies shall—

(1) Prepare and maintain a Consolidated UCA Management Plan; and

(2) Prepare semi-annual Consolidated UCA Management Reports addressing each UCA with an estimated value exceeding $5 million.

(b) Consolidated UCA Management Reports and Consolidated UCA Management Plan updates shall be submitted to the Office of the Director, Defense Procurement and Acquisition Policy, by October 31 and April 30 of each year in accordance with the procedures at PGI 217.7405.

(c) Consolidated UCA Management Reports shall include information about all change orders that are not forward priced (i.e., unpriced) and have an estimated value exceeding $5 million.

217.7406 Contract clauses.

(a) Use the clause at FAR 52.216-24, Limitation of Government Liability, in—

(1) All UCAs;

(2) Solicitations associated with UCAs;

(3) Basic ordering agreements;

(4) Indefinite delivery contracts;

(5) Any other type of contract providing for the use of UCAs; and

(6) Unpriced change orders with an estimated value exceeding $5 million.

(b)(1) Use the clause at 252.217-7027, Contract Definitization, in—

(i) All UCAs;

(ii) Solicitations associated with UCAs;

(iii) Basic ordering agreements;

(iv) Indefinite delivery contracts;

(v) Any other type of contract providing for the use of UCAs; and

(vi) Unpriced change orders with an estimated value exceeding $5 million.

(2) Insert the applicable information in paragraphs (a), (b), and (d) of the clause.

(3) If, at the time of entering into the UCA or unpriced change order, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.403-1, 15.403-2, or 15.403-3 for not requiring submission of certified cost or pricing data, the words “and certified cost or pricing data” may be deleted from paragraph (a) of the clause.

SUBPART 218.1—AVAILABLE ACQUISITION FLEXIBILITIES
(Revised September 13, 2019)

218.170 Additional acquisition flexibilities.
Additional acquisition flexibilities available to DoD are as follows:

(a) *Circumstances permitting other than full and open competition.* Use of the authority at FAR 6.302-2, Unusual and compelling urgency, may be appropriate under certain circumstances. See PGI 206.302-2.

(b) *Use of advance Military Interdepartmental Purchase Request (MIPR).* For urgent requirements, the advance MIPR may be transmitted electronically. See PGI 208.7004-3.

(c) *Use of the Governmentwide commercial purchase card.* Governmentwide commercial purchase cards do not have to be used for purchases valued at or below the micro-purchase threshold if the place of performance is entirely outside the United States. See 213.270(c)(1).

(d) *Master agreement for repair and alteration of vessels.* The contracting officer, without soliciting offers, may issue a written job order for emergency work to a contractor that has previously executed a master agreement, when delay would endanger a vessel, its cargo or stores, or when military necessity requires immediate work on a vessel. See 217.7103-4, 252.217-7010, and PGI 217.7103-4.

(e) *Spare parts breakout program.* An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date. See PGI 217.7506, paragraph 1-105(e).

(f) *Storage and disposal of toxic and hazardous materials.* Under certain emergency situations, exceptions apply with regard to the prohibition on storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations. See 223.7102(a)(3) and (7).

(g) *Authorization Acts, Appropriations Acts, and other statutory restrictions on foreign acquisition.* Acquisitions in the following categories are not subject to the restrictions of 225.7002, Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools: (1) Acquisitions at or below the simplified acquisition threshold; (2) Acquisitions outside the United States in support of combat operations; (3) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities; (4) Acquisitions of food, specialty metals, or hand or measuring tools in support of contingency operations, or for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2; (5) Emergency acquisitions by activities located outside the United States for personnel of those activities; and (6) Acquisitions by vessels in foreign waters. See 225.7002-2.

(h) *Rights in technical data.* The agency head may notify a person asserting a restriction that urgent or compelling circumstances (e.g., emergency repair or overhaul) do not permit the Government to continue to respect the asserted

restriction. See 227.7102-2; 227.7103-5; 227.7103-13; 227.7104; 227.7203-13; 252.227-7013; 252.227-7014; 252.227-7015; 252.227-7018; and 252.227-7037.

(i) *Tax exemption in Spain*. If copies of a contract are not available and duty-free import of equipment or materials is urgent, the contracting officer may send the Joint United States Military Group copies of the Letter of Intent or a similar document indicating the pending award. See PGI 229.7001.

(j) *Electronic submission and processing of payment requests*. Exceptions to the use of Wide Area WorkFlow are at 232.7002(a).

(k) *Mortuary services*. In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the contractor's facilities from other sources. See 237.7003(a) and 252.237-7003.

SUBPART 237.1–SERVICE CONTRACTS–GENERAL

(Revised September 13, 2019)

237.101 Definitions.

As used in this subpart—

"Increased performance of security-guard functions,"

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

"Senior mentors" means retired flag, general, or other military officers or retired senior civilian officials who provide expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staff, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.

237.102 Policy.

(b)(1) *Preference for certain commercial services.* See 212.272 for procedures for implementation of the preference for commercial facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services, as required by section 876 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328).

(2) *Public-private competitions.* See PGI 207.302 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A-76.

(c) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers shall not award contracts for functions that are exempt from private sector performance. See 207.503(e) for the associated documentation requirement.

(e) Program officials shall obtain assistance from contracting officials through the Peer Review process at 201.170.

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

(a) Under 10 U.S.C. 2465, the DoD is prohibited from entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be carried out on a Government-owned but privately operated installation;

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983; or

(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(b) Under Section 2907 of Pub. L. 103-160, this prohibition does not apply to services at installations being closed (see Subpart 237.74).

(c) Under Section 1010 of Pub. L. 107-56, this prohibition does not apply to any contract that--

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

(d)(1) Under Section 332 of Pub. L. 107-314, as amended by Section 333 of Pub. L. 109-364 and Section 343 of Pub. L. 110-181, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if--

(i) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(ii) The agency has determined that--

(A) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(B) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(C) Performance of such functions will not result in a reduction in the security of the installation or facility;

(iii) Contract performance will not extend beyond September 30, 2012; and

(iv) The total number of personnel employed to perform security-guard functions under all contracts entered into pursuant to this authority does not exceed the following limitations:

(A) For fiscal year 2007, the total number of such personnel employed under such contracts on October 1, 2006.

(B) For fiscal year 2008, the number equal to 90 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(C) For fiscal year 2009, the number equal to 80 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(D) For fiscal year 2010, the number equal to 70 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(E) For fiscal year 2011, the number equal to 60 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(F) For fiscal year 2012, the number equal to 50 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(2) Follow the procedures at PGI 237.102-70(d) to ensure that the personnel limitations specified in paragraph (d)(1)(iv) of this subsection are not exceeded.

237.102-71 Limitation on service contracts for military flight simulators.

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

(1) "Military flight simulator" means any system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

(2) "Service contract" means any contract entered into by DoD, the principal purpose of which is to furnish services in the United States through the use of service employees as defined in 41 U.S.C. 6701.

(b) Under Section 832 of Pub. L. 109-364, as amended by Section 883(b) of Pub. L. 110-181, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—

(1) Determines that a waiver is in the national interest; and

(2) Provides an economic analysis to the congressional defense committees at least 30 days before the waiver takes effect. This economic analysis shall include, at a minimum—

(i) A clear explanation of the need for the contract; and

(ii) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

(A) A rationale for including the alternative.

(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

(C) A discussion of the benefits to be realized from the alternative.

(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

(c) When reviewing requirements or participating in acquisition planning that would result in a military department or defense agency acquiring a military flight simulator, the contracting officer shall notify the program officials of the prohibition in paragraph (b) of this subsection. If the program officials decide to request a waiver from the Secretary of Defense under paragraph (b) of this subsection, the contracting officer shall follow the procedures at PGI 237.102-71.

237.102-72 Contracts for management services.
In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a contract for the acquisition of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, only if—

(a) The contract prohibits the contractor from performing inherently governmental functions;

(b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining—

(1) Courses of action to be taken in the best interest of the Government; and

(2) Best technical performance for the warfighter; and

(c) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

237.102-73 Prohibition on contracts for services of senior mentors.

DoD is prohibited from entering into contracts for the services of senior mentors. *See* PGI 237.102-73 for references to DoD policy and implementation guidance.

237.102-74 Taxonomy for the acquisition of services, and supplies and equipment.
See PGI 237.102-74 for further guidance on the taxonomy for the acquisition of services and the acquisition of supplies and equipment.

237.102-75 Defense Acquisition Guidebook.
See PGI 237.102-75 for information on the Defense Acquisition Guidebook, Chapter 10, Acquisition of Services.

237.102-76 Review criteria for the acquisition of services.
See PGI 237.102-76 for tenets and review criteria to be used when conducting preaward and postaward reviews for the acquisition of services.

237.102-77 Acquisition requirements roadmap tool.
See PGI 237.102-77 for guidance on using the Acquisition Requirements Roadmap Tool to develop and organize performance requirements into draft versions of the performance work statement, the quality assurance surveillance plan, and the performance requirements summary.

237.102-78 Market research report guide for improving the tradecraft in services acquisition.
See PGI 210.070 for guidance on use of the market research report guide to conduct and document market research for service acquisitions.

237.102-79 Private sector notification requirements in support of in-sourcing actions.
In accordance with 10 U.S.C. 2463, contracting officers shall provide written notification to affected incumbent contractors of Government in-sourcing determinations. Notification shall be provided within 20 business days of the contracting officer's receipt of a decision from the cognizant component in-sourcing program official. The notification will summarize the requiring official's final determination as to why the service is being in-sourced and shall be coordinated with the component's in-sourcing program official. No formal hiring or contract-related actions may be initiated prior to such notification, except for preliminary internal actions associated with hiring or contract modification. See the OASD (RFM) memorandum entitled "Private Sector Notification Requirements in Support of In-sourcing Actions," dated January 29, 2013, for further information, which is available at PGI 237.102-79.

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(1) The duties are of a temporary or intermittent nature;

(2) Acquisition of the services is advantageous to the national defense;

(3) DoD personnel with necessary skills are not available;

(4) Excepted appointment cannot be obtained;

(5) A nonpersonal services contract is not practicable;

(6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(7) Any other determination required by statues has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

(1) Direct health care services provided in medical treatment facilities;

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

(3) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR Part 6 competition requirements (see 206.001(b)).

(C) Approval requirements for—

(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)*(1)* and *(2)* of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see paragraph (b)(ii)(A)*(3)* of this section), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(iii)(A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if—

(1) The personal services—

(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b)(iii)(A)*(1)(i)* of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b)(iii)(A)*(2)* of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b)(iii) of this section.

(d) See 237.503(c) for requirements for certification and approval of requirements for services to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

(i) Temporary (not more than 1 year); or

(ii) Intermittent (not cumulatively more than 130 days in 1 year).

(2) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 2410a).

237.109 Services of quasi-military armed forces.
See 237.102-70 for prohibition on contracting for firefighting or security-guard functions.

237.170 Approval of contracts and task orders for services.

237.170-1 Scope.
This section—

(a) Implements 10 U.S.C. 2330; and

(b) Applies to services acquired for DoD, regardless of whether the services are acquired through--

(1) A DoD contract or task order; or

(2) A contract or task order awarded by an agency other than DoD.

237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below $93 million, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding $93 million, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review, approval, and reporting requirements established in accordance with subpart 217.7 when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.171 Training for contractor personnel interacting with detainees.

237.171-1 Scope.
This section prescribes policies to prevent the abuse of detainees, as required by Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

237.171-2 Definition.

"Combatant commander," "detainee," and "personnel interacting with detainees," as used in this section, are defined in the clause at 252.237-7019, Training for Contractor Personnel Interacting with Detainees.

237.171-3 Policy.

(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with detainees shall include a requirement that such contractor personnel—

(1) Receive Government-provided training regarding the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions; and

(2) Provide a copy of the training receipt document to the contractor.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will arrange for the training and a training receipt document to be provided to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see PGI 237.171-3(b).

237.171-4 Contract clause.
Use the clause at 252.237-7019, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the acquisition of services if—

(a) The clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Force(s) Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

237.172 Service contracts surveillance.

(a) Ensure that quality assurance surveillance plans are prepared in conjunction with the preparation of the statement of work or statement of objectives for solicitations and contracts for services. These plans should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR subpart 46.4.) Retain quality assurance surveillance plans in the contract file. See http://sam.dau.mil, Step Four – Requirements Definition, for examples of quality assurance surveillance plans.

(b) See PGI 216.505-70 for guidance regarding minimum labor category qualifications for orders issued under multiple award services contracts.

237.173 Prohibition on interrogation of detainees by contractor personnel.

237.173-1 Scope.

This section prescribes policies that prohibit interrogation of detainees by contractor personnel, as required by section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84).

237.173-2 Definitions. As used in this subpart–

"Detainee" means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

"Interrogation of detainees" means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

237.173-3 Policy.

(a) No detainee may be interrogated by contractor personnel.

(b) Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of detainees if—

(1) Such personnel are subject to the same laws, rules, procedures, and policies (including DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix, (http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf); DoD Directive 2310.01E, The Department of Defense Detainee Program (http://www.dtic.mil/whs/directives/corres/pdf/231001p.pdf); and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, (http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf)); pertaining to detainee operations and interrogations as those that apply to Government personnel in such positions in such interrogations; and

(2) Appropriately qualified and trained DoD personnel (military or civilian) are available to oversee the contractor's performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

237.173-4 Waiver.
The Secretary of Defense may waive the prohibition in 237.173-3(a) for a period of 60 days, if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States. Not later than five days after issuance of the waiver, the Secretary shall submit written notification to Congress. See specific waiver procedures at DoDI 1100.22.

237.173-5 Contract clause.
Insert the clause at 252.237-7010, Prohibition on Interrogation of Detainees by

Contractor Personnel, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are for the provision of services.

237.174 Disclosure of information to litigation support contractors.
See 204.74 for disclosure of information to litigation support contractors.

237.175 Training that uses live vertebrate animals.
Use the clause at 252.235-7002, Animal Welfare, as prescribed in 235.072(a), when contracting for training that will use live vertebrate animals.

SUBPART 237.70–MORTUARY SERVICES
(Revised September 13, 2019)

237.7000 Scope.
This subpart—

(a) Applies to contracts for mortuary services (the care of remains) for military personnel within the United States; and

(b) May be used as guidance in areas outside the United States for mortuary services for deceased military and civilian personnel.

237.7001 Method of acquisition.

(a) *Requirements type contract.* By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) *Purchase order.* Where no contract exists, use DD Form 1155, Order for Supplies or Services, to obtain mortuary services.

237.7002 Area of performance and distribution of contracts.
Follow the procedures at PGI 237.7002 for—

(a) Defining the geographical area to be covered by the contract; and

(b) Distributing copies of the contract.

237.7003 Solicitation provisions and contract clauses.

(a) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237-7004, Area of Performance, in solicitations or contracts that include port of entry requirements:

(1) 252.237-7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause).

(2) 252.237-7004, Area of Performance.

(3) 252.237-7005, Performance and Delivery.

(4) 252.237-7006, Subcontracting.

(5) 252.237-7007, Termination for Default.

(6) 252.237-7008, Group Interment.

(7) 252.237-7009, Permits.

(8) 252.237-7011, Preparation History.

(b) Use the clause at FAR 52.245-1, Government Property, with its Alternate I, in solicitations and contracts that include port of entry requirements.

SUBPART 239.74–TELECOMMUNICATIONS SERVICES

(Revised September 13, 2019)

239.7400 Scope.

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services meet the definition of information technology.

239.7401 Definitions.

As used in this subpart—

"Common carrier" means any entity engaged in the business of providing telecommunications services which are regulated by the Federal Communications Commission or other governmental body.

"Foreign carrier" means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by a U.S. governmental regulatory body and not doing business as a citizen of the United States, providing telecommunications services outside the territorial limits of the United States.

"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. The following are not "governmental regulatory bodies"—

(1) Regulatory bodies whose decisions are not subject to judicial appeal; and

(2) Regulatory bodies which regulate a company owned by the same entity which creates the regulatory body.

"Long-haul telecommunications" means all general and special purpose long-distance telecommunications facilities and services (including commercial satellite services, terminal equipment, and local circuitry supporting the long-haul service) to or from the post, camp, base, or station switch and/or main distribution frame (except for trunk lines to the first-serving commercial central office for local communications services).

"Noncommon carrier" means any entity other than a common carrier offering telecommunications facilities, services, or equipment for lease.

"Securing," "sensitive information," and "telecommunications systems" have the meaning given in the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services.

"Telecommunications" means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

"Telecommunications services" means the services acquired, whether by lease or contract, to meet the Government's telecommunications needs. The term includes the telecommunications facilities and equipment necessary to provide such services.

239.7402 Policy.

(a) *Acquisition.* DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(1) On a competitive basis, except when acquisition using other than full and open competition is justified;

(2) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices; and

(3) Making provision in telecommunications services contracts for adoption of—

(i) FCC approved practices; or

(ii) The generally accepted practices of the industry on those issues concerning common carrier services where—

(A) The governmental regulatory body has not expressed itself;

(B) The governmental regulatory body has declined jurisdiction; or

(C) There is no governmental regulatory body to decide.

(b) *Security.*

(1) The contracting officer shall ensure, in accordance with agency procedures, that purchase requests identify—

(i) The nature and extent of information requiring security during telecommunications;

(ii) The requirement for the contractor to secure telecommunications systems;

(iii) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques, or services must be interoperable; and

(iv) The approved telecommunications security equipment, devices, techniques, or services, such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(2) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts.

(3) Except as provided in paragraph (b)(4) of this section, contractors and subcontractors shall normally provide all required property, to include telecommunications security equipment or related devices, in accordance with FAR 45.102. In some cases, such as for communications security (COMSEC) equipment designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) The head of the agency may authorize provision of the necessary property as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.102(b) are met.

(c) *Foreign carriers*. For information on contracting with foreign carriers, see PGI 239.7402(c).

(d) *Long-haul telecommunications services*. When there is a requirement for procurement of long-haul telecommunications services, follow PGI 239.7402(d).

239.7403 Reserved.

239.7404 Reserved.

239.7405 Delegated authority for telecommunications resources.
The contracting officer may enter into a telecommunications service contract on a month-to-month basis or for any longer period or series of periods, not to exceed a total of 10 years. See PGI 239.7405 for documents relating to this contracting authority, which the General Services Administration has delegated to DoD.

239.7406 Certified cost or pricing data and data other than certified cost or pricing data.

(a) Common carriers are not required to submit certified cost or pricing data before award of contracts for tariffed services. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 2306a. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation.

(c) Contracting officers shall obtain sufficient data to determine that the prices are reasonable in accordance with FAR 15.403-3 or 15.403-4. See PGI 239.7406 for examples of instances where additional data may be necessary to determine price reasonableness.

239.7407 Type of contract.
When acquiring telecommunications services, the contracting officer may use a basic agreement (see FAR 16.702) in conjunction with communication service authorizations. When using this method, follow the procedures at PGI 239.7407.

239.7408 Special construction.

239.7408-1 General.

(a) "Special construction" normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements. This may include—

(1) Moving or relocating equipment;

(2) Providing temporary facilities;

(3) Expediting provision of facilities; or

(4) Providing specially constructed channel facilities to meet Government requirements.

(b) Use this subpart instead of FAR Part 36 for acquisition of "special construction."

(c) Special construction costs may be—

(1) A contingent liability for using telecommunications services for a shorter time than the minimum to reimburse the contractor for unamortized nonrecoverable costs. These costs are usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation charge.

(d) When a common carrier submits a proposal or quotation which has special construction requirements, the contracting officer shall require a detailed special construction proposal. Analyze all special construction proposals to—

(1) Determine the adequacy of the proposed construction;

(2) Disclose excessive or duplicative construction; and

(3) When different forms of charge are possible, provide for the form of charge most advantageous to the Government.

(e) When possible, analyze and approve special construction charges before receiving the service. Impose a ceiling on the special construction costs before authorizing the contractor to proceed, if prior approval is not possible. The contracting officer must approve special construction charges before final payment.

239.7408-2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR Subpart 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction, alteration, or repair (as defined in FAR 22.401) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

(b) Each CSA or other type contract which is subject to construction labor standards under FAR 22.402 shall cite that fact.

239.7409 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling, or wiring of equipment to provide telecommunications services that cannot be provided with general use equipment.

(b) Special assembly rates and charges shall be based on estimated costs. The contracting officer should negotiate special assembly rates and charges before starting service. When it is not possible to negotiate in advance, use provisional rates and charges subject to adjustment, until final rates and charges are negotiated. The CSAs authorizing the special assembly shall be modified to reflect negotiated final rates and charges.

239.7410 Cancellation and termination.

(a)(1) Cancellation is stopping a requirement after placing of an order but before service starts.

(2) Termination is stopping a requirement after placing an order and after service starts.

(b) Determine cancellation or termination charges under the provisions of the applicable tariff or agreement/contract.

239.7411 Contract clauses.

(a) In addition to other appropriate FAR and DFARS clauses, use the following clauses in solicitations, contracts, and basic agreements for telecommunications services. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency.

(1) 252.239-7002, Access.

(2) 252.239-7004, Orders for Facilities and Services.

(3) 252.239-7006, Tariff Information.

(4) 252.239-7007, Cancellation or Termination of Orders.

(b) Use the following clauses in solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special

construction. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239-7011, Special Construction and Equipment Charges; and

(2) 252.239-7012, Title to Telecommunication Facilities and Equipment.

(c) Use the following clauses in basic agreements for telecommunications services—

(1) 252.239-7013, Obligation of the Government;

(2) 252.239-7014, Term of Agreement, and insert the effective date of the agreement in paragraph (a) of the clause; and

(3) 252.239-7015, Continuation of Communication Service Authorizations, as appropriate, and insert in paragraph (a) of the clause, the name of the contracting office and the basic agreement or contract number which is being superseded.

(d) Use the clause at 252.239-7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires secure telecommunications.

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247.301 General.

See PGI 247.301 for transportation guidance relating to Government Purchase Card purchases.

247.301-70 Definition.

"Integrated logistics managers" or "third-party logistics providers" means providers of multiple logistics services. Some examples of logistics services are the management of transportation, demand forecasting, information management, inventory maintenance, warehousing, and distribution.

247.301-71 Evaluation factor or subfactor.

For contracts that will include a significant requirement for transportation of items outside the contiguous United States, include an evaluation factor or subfactor that favors suppliers, third-party logistics providers, and integrated logistics managers that commit to using carriers that participate in one of the readiness programs (e.g., Civil Reserve Air Fleet and Voluntary Intermodal Sealift Agreement).

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305-10 Packing, marking, and consignment instructions.

Follow the procedures at PGI 247.305-10 for preparation of consignment instructions.

247.370 DD Form 1384, Transportation Control and Movement Document.

The transportation office of the shipping activity prepares the DD Form 1384 to accompany all shipments made through a military air or water port, in accordance with DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 203. A link to this document is available in PGI 247.370.

247.371 DD Form 1653, Transportation Data for Solicitations.

The transportation specialist prepares the DD Form 1653 to accompany requirements for the acquisition of supplies. The completed form should contain recommendations for suitable f.o.b. terms and other suggested transportation provisions for inclusion in the solicitation.

247.372 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

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252.239-7012 Title to Telecommunication Facilities and Equipment.
252.239-7013 Obligation of the Government.
252.239-7014 Term of Agreement.
252.239-7015 Continuation of Communication Service Authorizations.
252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services.
252.239-7017 Notice of Supply Chain Risk.

252.239-7018 Supply Chain risk.
252.241-7000 Superseding Contract.
252.241-7001 Government Access.
252.242-7000 Reserved.
252.242-7001 Reserved.
252.242-7002 Reserved.
252.242-7003 Reserved.
252.242-7004 Material Management and Accounting System.
252.242-7005 Contractor Business Systems.
252.242-7006 Accounting System Administration.
252.243-7000 Reserved.
252.243-7001 Pricing of Contract Modifications.
252.243-7002 Requests for Equitable Adjustment.
252.244-7000 Subcontracts for Commercial Items.
252.244-7001 Contractor Purchasing System Administration.
252.245-7000 Government-Furnished Mapping, Charting, and Geodesy Property.
252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property
252.245-7002 Reporting Loss of Government Property.
252.245-7003 Contractor Property Management System Administration.
252.245-7004 Reporting, Reutilization, and Disposal.
252.246-7000 Reserved.
252.246-7001 Warranty of Data.
252.246-7002 Warranty of Construction (Germany).
252.246-7003 Notification of Potential Safety Issues.
252.246-7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.
252.246-7005 Notice of Warranty Tracking of Serialized Items.
252.246-7006 Warranty Tracking of Serialized Items.
252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.
252.246-7008 Sources of Electronic Parts.
252.247-7000 Hardship Conditions.
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252.247-7004 Indefinite Quantities–Fixed Charges.
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252.247-7006 Removal of Contractor's Employees.
252.247-7007 Liability and Insurance.
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252.247-7014 Demurrage.
252.247-7015 Reserved.
252.247-7016 Contractor Liability for Loss or Damage.
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252.247-7020	Reserved.
252.247-7021	Reserved.
252.247-7022	Representation of Extent of Transportation by Sea.
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252.247-7025	Reflagging or Repair Work.
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.
252.247-7027	Riding Gang Member Requirements.
252.247-7028	Application for U.S. Government Shipping Documentation/ Instructions.
252.249-7000	Special Termination Costs.
252.249-7001	Reserved.
252.249-7002	Notification of Anticipated Contract Termination or Reduction.
252.251-7000	Ordering From Government Supply Sources.
252.251-7001	Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services.

(Revised September 13, 2019)

252.213-7000 Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations.
As prescribed in 213.106-2-70, use the following provision:

NOTICE TO PROSPECTIVE SUPPLIERS ON USE OF SUPPLIER PERFORMANCE RISK SYSTEM IN PAST PERFORMANCE EVALUATIONS (SEP 2019)

(a) The Supplier Performance Risk System (SPSR) application (https://www.sprs.csd.disa.mil) will be used in the evaluation of suppliers' past performance in accordance with DFARS 213.106-2(b)(i).

(b) SPRS collects quality and delivery data on previously awarded contracts and orders from existing Department of Defense reporting systems to classify each supplier's performance history by Federal supply class (FSC) and product or service code (PSC). The SPRS application provides the contracting officer quantifiable past performance information regarding a supplier's quality and delivery performance for the FSC and PSC of the supplies being purchased.

(c) The quality and delivery classifications identified for a supplier in SPRS will be used by the contracting officer to evaluate a supplier's past performance in conjunction with the supplier's references (if requested) and other provisions of this solicitation under the past performance evaluation factor. The Government reserves the right to award to the supplier whose quotation or offer represents the best value to the Government.

(d) SPRS classifications are generated monthly for each contractor and can be reviewed by following the access instructions in the SPRS User's Manual found at https://www.sprs.csd.disa.mil/reference.htm. Contractors are granted access to SPRS for their own classifications only. Suppliers are encouraged to review their own classifications, the SPRS reporting procedures and classification methodology detailed in the SPRS User's Manual, and SPRS Evaluation Criteria available from the references at https://www.sprs.csd.disa.mil/pdf/SPRS_DataEvaluationCriteria.pdf. The method to challenge a rating generated by SPRS is provided in the User's Manual.

(End of provision)

(Revised September 13, 2019)

252.216-7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.
As prescribed in 216.203-4-70(a)(1), use the following clause:

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

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

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

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

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

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

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

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

(3) This contract shall be modified accordingly.

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

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

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

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

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

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

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

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

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

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

(End of clause)

252.216-7001 Economic Price Adjustment–Nonstandard Steel Items.
As prescribed in 216.203-4-70(b), use the following clause:

ECONOMIC PRICE ADJUSTMENT--NONSTANDARD STEEL ITEMS (JUL 1997)

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

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

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

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

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

"Established price" is—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

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

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

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within

the meaning of the clause of this contract entitled "Default," the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

NOTES:

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

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

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

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

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

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

(End of clause)

252.216-7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Commercial Item Acquisition with Adequate Price Competition.
As prescribed in 216.601(e), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216-29:

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

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

252.216-7003 Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.
As prescribed in 216.203-4-70(c)(1), use the following clause:

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

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

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

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

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

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

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

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

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

(End of clause)

252.216–7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.
As prescribed in 216.406(e), use the following clause:

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

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

"Covered incident"–

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

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

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

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

(A) In a criminal proceeding, a conviction.

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

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

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

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

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

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

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

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

(End of clause)

252.216-7005 Reserved.

252.216-7006 Ordering.
As prescribed in 216.506(a), use the following clause:

ORDERING (SEP 2019)

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

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

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

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

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

(End of Clause)

252.216-7007 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products—Representation.
As prescribed in 216.203-4-70(a)(2), use the following provision:

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

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

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

(End of provision)

252.216-7008 Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government—Representation.
As prescribed in 216.203-4-70(c)(2), use the following provision:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT—REPRESENTATION

(MAR 2012)

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

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

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

(End of provision)

252.216-7009 Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding.
As prescribed in 216.307(a), use the following clause:

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

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

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

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

(End of clause)

(Revised September 13, 2019)

252.225-7000 Buy American–Balance of Payments Program Certificate.

Basic. As prescribed in 225.1101(1) and (1)(i), use the following provision:

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (NOV 2014)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the Buy American and Balance of Payments Program—Basic clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American and Balance of Payments Program—Basic clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

Line Item Number	Country of Origin
_____	_____

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

Line Item Number	Country of Origin (If known)

(End of provision)

Alternate I. As prescribed in 225.1101(1) and (1)(ii), use the following provision, which adds "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" in paragraph (a), and replaces "qualifying country end products" in paragraphs (b)(2) and (c)(2) with "qualifying country end products or SC/CASA state end products":

BUY AMERICAN—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE I (NOV 2014)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "United States," as used in this provision, have the meanings given in the Buy American and Balance of Payments Program—Alternate I clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products or SC/CASA state end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American and Balance of Payments Program—Alternate I clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) For end products other than COTS items, components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products or SC/CASA state end products:

Line Item Number	Country of Origin

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end

products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

Line Item Number	Country of Origin (If known)
_____	_____

(End of provision)

252.225-7001 Buy American and Balance of Payments Program.

Basic. As prescribed in 225.1101(2)(i) and (2)(ii), use the following clause:

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—BASIC
(DEC 2017)

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

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact)

if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if —

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements 41 U.S.C chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see section 12.505(a)(1) of the Federal Acquisition Regulation). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I. As prescribed in 225.1101(2)(i) and (2)(iii), use the following clause, which adds "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" to paragraph (a), and uses different paragraphs (b) and (c) than the basic clause:

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM—ALTERNATE I (DEC 2017)

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

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if —

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225-7002 Qualifying Country Sources as Subcontractors.
As prescribed in 225.1101(3), use the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC 2017)

(a) *Definition.* "Qualifying country," as used in this clause, means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.
As prescribed in 225.7204(a), use the following provision:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (OCT 2015)

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

(b) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds $13.5 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $700,000 in value; and

(ii) Could be performed inside the United States or Canada.

(c) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(d) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(e) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.

(End of provision)

252.225-7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.
As prescribed in 225.7204(b), use the following clause:

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (OCT 2015)

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

(b) *Reporting requirement*. The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds $700,000 in value; and

(2) Could be performed inside the United States or Canada.

(c) *Submission of reports*. The Contractor—

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L) DPAP/CPIC, Washington, DC 20301-3060.

(d) *Report format*. The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.

(End of clause)

252.225-7005 Identification of Expenditures in the United States.
As prescribed in 225.1103(1), use the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (JUN 2005)

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

(b) This clause applies only if the Contractor is—

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(c) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (c)(3)(i) through (iii) of this clause.

(d) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225-7006 Acquisition of the American Flag.
As prescribed in 225.7002-3(c), insert the following clause:

ACQUISITION OF THE AMERICAN FLAG (AUG 2015)

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

(b) If the Contractor is required to deliver under this contract one or more American flags (Product or Service Code 8345), such flag(s), including the materials and components thereof, shall be manufactured in the United States, consistent with the requirements at 10 U.S.C. 2533a (commonly known as the "Berry Amendment").

(c) This clause does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flagpoles and accessories).

(End of clause)

252.225-7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies.
As prescribed in 225.1103(4), use the following clause:

PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018)

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

"600 series of the Commerce Control List" means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement No. 1. that have a "6" as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of "600 series" in 15 CFR 772.)

"Communist Chinese military company" means any entity, regardless of geographic location that is—

(1) A part of the commercial or defense industrial base of the People's Republic of China including a subsidiary or affiliate of such entity; or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

"Item" means—

(1) A USML defense article, as defined at 22 CFR 120.6;

(2) A USML defense service, as defined at 22 CFR 120.9; or

(3) A 600 series item, as defined at 15 CFR 772.1.

"United States Munitions List" means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

(b) Any items covered by the United States Munitions List or the 600 series of the Commerce Control List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List or the 600 series of the Commerce Control List.

(End of clause)

252.225-7008 Restriction on Acquisition of Specialty Metals.
As prescribed in 225.7003-5(a)(1), use the following clause:

RESTRICTION ON ACQUISITION OF SPECIALTY METALS (MAR 2013)

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

"Alloy" means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

"Produce" means—

(i) Atomization;
(ii) Sputtering; or
(iii) Final consolidation of non-melt derived metal powders.

"Specialty metal" means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

"Steel" means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

(b) Any specialty metal delivered under this contract shall be melted or produced in the United States or its outlying areas.

(End of clause)

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.
As prescribed in 225.7003-5(a)(2), use the following clause:

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (OCT 2014)

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

"Alloy" means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(i) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(ii) If two metals are specified in the name (e.g, nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

"Assembly" means an item forming a portion of a system or subsystem that—

(i) Can be provisioned and replaced as an entity; and

(ii) Incorporates multiple, replaceable parts.

"Commercial derivative military article" means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

"Commercially available off-the-shelf item"—

(i) Means any item of supply that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under this contract or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means any item supplied to the Government as part of an end item or of another component.

"Electronic component" means an item that operates by controlling the flow of

electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component, and does not include any high performance magnets that may be used in the electronic component.

"End item" means the final production product when assembled or completed and ready for delivery under a line item of this contract.

"High performance magnet" means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

"Produce" means—

(i) Atomization;

(ii) Sputtering; or

(iii) Final consolidation of non-melt derived metal powders.

"Qualifying country" means any country listed in the definition of "Qualifying country" at 225.003 of the Defense Federal Acquisition Regulation Supplement (DFARS).

"Required form" means in the form of mill product, such as bar, billet, wire, slab, plate, or sheet, and in the grade appropriate for the production of—

(i) A finished end item to be delivered to the Government under this contract; or

(ii) A finished component assembled into an end item to be delivered to the Government under this contract.

"Specialty metal" means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of—

(A) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(B) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium alloys.

"Steel" means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

"Subsystem" means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(b) *Restriction.* Except as provided in paragraph (c) of this clause, any specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country.

(c) *Exceptions.* The restriction in paragraph (b) of this clause does not apply to—

(1) Electronic components.

(2)(i) Commercially available off-the-shelf (COTS) items, other than—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, or sheet, that have not been incorporated into COTS end items, subsystems, assemblies, or components;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems; and

(D) COTS fasteners, unless—

(1) The fasteners are incorporated into COTS end items, subsystems, assemblies, or components; or

(2) The fasteners qualify for the commercial item exception in paragraph (c)(3) of this clause.

(ii) A COTS item is considered to be "without modification" if it is not modified prior to contractual acceptance by the next higher tier in the supply chain.

(A) Specialty metals in a COTS item that was accepted without modification by the next higher tier are excepted from the restriction in paragraph (b) of this clause, and remain excepted, even if a piece of the COTS item subsequently is removed (e.g., the end is removed from a COTS screw or an extra hole is drilled in a COTS bracket).

(B) Specialty metals that were not contained in a COTS item upon acceptance, but are added to the COTS item after acceptance, are subject to the restriction in paragraph (b) of this clause (e.g., a special reinforced handle made of

specialty metal is added to a COTS item).

(C) If two or more COTS items are combined in such a way that the resultant item is not a COTS item, only the specialty metals involved in joining the COTS items together are subject to the restriction in paragraph (b) of this clause (e.g., a COTS aircraft is outfitted with a COTS engine that is not the COTS engine normally provided with the aircraft).

(D) For COTS items that are normally sold in the commercial marketplace with various options, items that include such options are also COTS items. However, if a COTS item is offered to the Government with an option that is not normally offered in the commercial marketplace, that option is subject to the restriction in paragraph (b) of this clause (e.g. - An aircraft is normally sold to the public with an option for installation kits. The Department of Defense requests a military-unique kit. The aircraft is still a COTS item, but the military-unique kit is not a COTS item and must comply with the restriction in paragraph (b) of this clause unless another exception applies).

(3) Fasteners that are commercial items, if the manufacturer of the fasteners certifies it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners for all customers.

(4) Items manufactured in a qualifying country.

(5) Specialty metals for which the Government has determined in accordance with DFARS 225.7003-3 that specialty metal melted or produced in the United States, its outlying areas, or a qualifying country cannot be acquired as and when needed in—

(i) A satisfactory quality;

(ii) A sufficient quantity; and

(iii) The required form.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in the end item, as estimated in good faith by the Contractor. This exception does not apply to high performance magnets containing specialty metals.

(d) *Compliance for commercial derivative military articles.*

(1) As an alternative to the compliance required in paragraph (b) of this clause, the Contractor may purchase an amount of domestically melted or produced specialty metals in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, if—

(i) The Contracting Officer has notified the Contractor of the items to be delivered under this contract that have been determined by the Government to meet the definition of "commercial derivative military article"; and

(ii) For each item that has been determined by the Government to meet the definition of "commercial derivative military article," the Contractor has certified, as specified in the provision of the solicitation entitled "Commercial Derivative Military Article—Specialty Metals Compliance Certificate" (DFARS 252.225-7010), that the Contractor and its subcontractor(s) will enter into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of—

(A) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(B) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(2) For the purposes of this alternative, the amount of specialty metal that is required to carry out production of the commercial derivative military article includes specialty metal contained in any item, including COTS items.

(e) *Subcontracts.*

(1) The Contractor shall exclude and reserve paragraph (d) and this paragraph (e)(1) when flowing down this clause to subcontracts.

(2) The Contractor shall insert paragraphs (a) through (c) and this paragraph (e)(2) of this clause in subcontracts, including subcontracts for commercial items, that are for items containing specialty metals to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting this clause in subcontracts, the Contractor shall—

(i) Modify paragraph (c)(6) of this clause only as necessary to facilitate management of the minimal content exception at the prime contract level. The minimal content exception does not apply to specialty metals contained in high-performance magnets; and

(ii) Not further alter the clause other than to identify the appropriate parties.

(End of clause)

252.225-7010 Commercial Derivative Military Article—Specialty Metals Compliance Certificate.
As prescribed in 225.7003-5(b), use the following provision:

COMMERCIAL DERIVATIVE MILITARY ARTICLE—SPECIALTY METALS COMPLIANCE CERTIFICATE (JUL 2009)

(a) *Definitions.* "Commercial derivative military article," "commercially available off-the-shelf item," "produce," "required form," and "specialty metal," as used in this provision, have the meanings given in the clause of this solicitation entitled "Restriction on Acquisition of Certain Articles Containing Specialty Metals" (DFARS 252.225-7009).

(b) The offeror shall list in this paragraph any commercial derivative military articles it intends to deliver under any contract resulting from this solicitation using the alternative compliance for commercial derivative military articles, as specified in paragraph (d) of the clause of this solicitation entitled "Restriction on Acquisition of Certain Articles Containing Specialty Metals" (DFARS 252.225-7009). The offeror's designation of an item as a "commercial derivative military article" will be subject to Government review and approval.

_____

_____.

(c) If the offeror has listed any commercial derivative military articles in paragraph (b) of this provision, the offeror certifies that, if awarded a contract as a result of this solicitation, and if the Government approves the designation of the listed item(s) as commercial derivative military articles, the offeror and its subcontractor(s) will demonstrate that individually or collectively they have entered into a contractual agreement or agreements to purchase an amount of domestically melted or produced specialty metal in the required form, for use during the period of contract performance in the production of each commercial derivative military article and the related commercial article, that is not less than the Contractor's good faith estimate of the greater of—

(1) An amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(2) An amount equivalent to 50 percent of the amount of specialty metal that will be purchased by the Contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

(d) For the purposes of this provision, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military articles.

(End of provision)

252.225-7011 Restriction on Acquisition of Supercomputers.
As prescribed in 225.7012-3, use the following clause:

RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (JUN 2005)

Supercomputers delivered under this contract shall be manufactured in the United States or its outlying areas.

(End of clause)

252.225-7012 Preference for Certain Domestic Commodities.
As prescribed in 225.7002-3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)

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

"Component" means any item supplied to the Government as part of an end product or of another component.

"End product" means supplies delivered under a line item of this contract.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Structural component of a tent"—

(i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);

(ii) Does not include equipment such as heating, cooling, or lighting.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory

quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR Part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

(End of clause)

252.225-7013 Duty-Free Entry.
As prescribed in 225.1101(4), use the following clause:

DUTY-FREE ENTRY (MAY 2016)

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

"Component," means any item supplied to the Government as part of an end product or of another component.

"Customs territory of the United States" means the 50 States, the District of Columbia, and Puerto Rico.

"Eligible product" means—

(i) "Designated country end product," as defined in the Trade Agreements (either basic or alternate) clause of this contract;

(ii) "Free Trade Agreement country end product," other than a "Bahrainian end product," a "Moroccan end product," a Panamanian end product," or a "Peruvian end product," as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either basic or alternate II) clause of this contract, basic or its Alternate II;

(iii) "Canadian end product," as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate I or alternate III) clause of this Contract; or

(iv) "Free Trade Agreement country end product" other than a "Bahrainian end product," "Korean end product," "Moroccan end product," "Panamanian end product," or "Peruvian end product," as defined in of the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate IV or alternate V) clause of this contract.

"Qualifying country" and "qualifying country end product" have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract, basic or alternate.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.- made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $300 per shipment into the customs territory of the United States.

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv)(A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry

to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE-GNTF, 207 New York Avenue, Staten Island, New York, 10305-5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) If the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, e.g., for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the customs territory of the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE"; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of eligible products or qualifying country supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—
(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

252.225-7014 Reserved.

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools.
As prescribed in 225.7002-3(b), use the following clause:

RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS
(JUN 2005)

Hand or measuring tools delivered under this contract shall be produced in the United States or its outlying areas.

(End of clause)

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings.
As prescribed in 225.7009-5, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS
(JUN 2011)

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

(1) "Bearing components" means the bearing element, retainer, inner race, or outer race.

(2) "Component," other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) "End product" means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause—

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States, its outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

252.225-7017 Photovoltaic Devices.
As prescribed in 225.7017-4(a), use the following clause:

PHOTOVOLTAIC DEVICES (AUG 2019)

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

"Bahrainian photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Bahrain; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Bahrain.

"Canadian photovoltaic device" means a photovoltaic device that has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Canada.

"Caribbean Basin country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a Caribbean Basin country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

"Designated country" means—

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada,

Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country photovoltaic device" means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

"Domestic photovoltaic device" means a photovoltaic device that is manufactured in the United States

"Foreign photovoltaic device" means a photovoltaic device other than a domestic photovoltaic device.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore.

"Free Trade Agreement country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

"Korean photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Korea (Republic of); or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Korea (Republic of).

"Least developed country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a least developed country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

"Moroccan photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Morocco; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Morocco.

"Panamanian photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Panama; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Panama.

"Peruvian photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in Peru; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of Peru.

"Photovoltaic device" means a device that converts light directly into electricity through a solid-state, semiconductor process.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany

Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country photovoltaic device" means a photovoltaic device manufactured in a qualifying country.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made photovoltaic device" means a photovoltaic device that—

(1) Is manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

"WTO GPA country photovoltaic device" means a photovoltaic device that—

(1) Is wholly manufactured in a WTO GPA country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) More than the micro-purchase threshold but less than $25,000, then the Contractor shall utilize only domestic photovoltaic devices unless, in its offer, it specified utilization of qualifying country or other foreign photovoltaic devices in

paragraph (d)(2) of the Photovoltaic Devices—Certificate provision of the solicitation.

(2) $25,000 or more but less than $80,317, then the Contractor shall utilize in the performance of this contract only domestic photovoltaic devices unless, in its offer, it specified utilization of Canadian, qualifying country, or other foreign photovoltaic devices in paragraph (d)(3) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, then the Contractor shall utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, or, at the Contractor's option, a domestic photovoltaic device;

(3) $80,317 or more but less than $100,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices unless, in its offer, it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(4) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor's option, a domestic photovoltaic device;

(4) $100,000 or more but less than $180,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, unless, in its offer it specified utilization of Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic devices), qualifying country photovoltaic devices, or other foreign photovoltaic devices in paragraph (d)(5) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device, then the Contractor shall utilize a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device; or, at the Contractor's option, a domestic photovoltaic device; or

(5) $180,000 or more, then the Contractor shall utilize under this contract only U.S.-made, designated country, or qualifying country photovoltaic devices.

(End of clause)

252.225-7018 Photovoltaic Devices—Certificate.
As prescribed in 225.7017-4(b), use the following provision:

PHOTOVOLTAIC DEVICES—CERTIFICATE (DEC 2018)

(a) *Definitions.* "Bahrainian photovoltaic device," "Canadian photovoltaic device," "Caribbean Basin photovoltaic device," "designated country," "designated country photovoltaic device," "domestic photovoltaic device," "foreign photovoltaic device," "Free Trade Agreement country," "Free Trade Agreement photovoltaic device," "Korean

photovoltaic device," "least developed country photovoltaic device," "Moroccan photovoltaic device," "Panamanian photovoltaic device," "Peruvian photovoltaic device," "photovoltaic device," "qualifying country," "qualifying country photovoltaic device," "United States," "U.S.-made photovoltaic device," and "WTO GPA country photovoltaic device" have the meanings given in the Photovoltaic Devices clause of this solicitation.

(b) *Restrictions.* The following restrictions apply, depending on the estimated aggregate value of photovoltaic devices to be utilized under a resultant contract:

(1) If more than the micro-purchase threshold but less than $180,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), or (d)(5)(ii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If $180,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Country in which a designated country photovoltaic device was wholly manufactured or was substantially transformed.* If the estimated value of the photovoltaic devices to be utilized under a resultant contract exceeds $25,000, the Offeror's certification that such photovoltaic device (e.g., solar panel) is a designated country photovoltaic device shall be consistent with country of origin determinations by the U.S. Customs and Border Protection with regard to importation of the same or similar photovoltaic devices into the United States. If the Offeror is uncertain as to what the country of origin would be determined to be by the U.S. Customs and Border Protection, the Offeror shall request a determination from U.S. Customs and Border Protection. (See http://www.cbp.gov/trade/rulings.)

(d) *Certification and identification of country of origin.*

[The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:]

___ (1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value that does not exceed the micro-purchase threshold.

(2) If more than the micro-purchase threshold but less than $25,000—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. *[Offeror*

to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]

(3) If $25,000 or more but less than $80,317—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Canadian photovoltaic device or a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The foreign (other than Canadian or qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(4) If $80,317 or more but less than $100,000—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (d)(4)(ii) of this provision) are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(5) If $100,000 or more but less than $180,000—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

___ (ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) or a qualifying country photovoltaic device *[Offeror to specify country of origin_____]*; or

___ (iii) The offered foreign photovoltaic devices (other than those from

countries listed in paragraph (d)(5)(ii) of this provision) are the product of _____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

(6) If $180,000 or more, the Offeror certifies that each photovoltaic device to be used in performance of the contract is—

___ (i) A U.S.-made photovoltaic device; or

___ (ii) A designated country photovoltaic device or a qualifying country photovoltaic device. *[Offeror to specify country of origin_____.]*

(End of provision)

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.
As prescribed in 225.7007-3, use the following clause:

RESTRICTION ON ACQUISITION OF ANCHOR AND MOORING CHAIN
(DEC 2009)

(a) "Component," as used in this clause, means an article, material, or supply incorporated directly into an end product.

(b) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States or its outlying areas, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States or its outlying areas shall exceed 50 percent of the total cost of components.

(c) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

(End of clause)

252.225-7020 Trade Agreements Certificate.

Basic. As prescribed in 225.1101(5) and (5)(i), use the following provision:

TRADE AGREEMENTS CERTIFICATE—BASIC (NOV 2014)

(a) *Definitions.* "Designated country end product," "nondesignated country end product," "qualifying country end product," and "U.S.-made end product" as used in this provision have the meanings given in the Trade Agreements—Basic clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, or designated country end products unless—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements—Basic clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, or designated country end product.

(2) The following supplies are other nondesignated country end products:

(Line Item Number) (Country of Origin)

(End of provision)

Alternate I. As prescribed in 225.1101(5) and (5)(ii), use the following provision, which uses different paragraphs (a), (b)(2), and (c) than the basic provision:

TRADE AGREEMENTS CERTIFICATE—ALTERNATE I (NOV 2014)

(a) *Definitions.* "Designated country end product," "nondesignated country end product," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "U.S.-made end product," as used in this provision, have the meanings given in the Trade Agreements—Alternate I clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreement—Alternate I clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The following are other nondesignated country end products:

(Line Item Number) (Country of Origin)

(End of provision)

252.225-7021 Trade Agreements.

Basic. As prescribed in 225.1101(6) and (6)(i), use the following clause:

TRADE AGREEMENTS—BASIC (SEP 2019)

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

"Caribbean Basin country end product"—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country end product" means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Least developed country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Nondesignated country end product" means any end product that is not a U.S.-made end product or a designated country end product.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made end product" means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"WTO GPA country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at http://www.usitc.gov/tata/hts/bychapter/index.htm. The following sections of the

HTSUS provide information regarding duty-free status of articles specified in the definition of "Caribbean Basic country end product" within paragraph (a) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.

(End of clause)

Alternate I. Reserved.

Alternate II. As prescribed in 225.1101(6) and (6)(ii), use the following clause, which adds "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" to paragraph (a); (ii) uses a different paragraph (c) than the basic clause; (iii) adds a new paragraph (d); and (iv) includes paragraphs (e) and (f) which are the same paragraphs (d) and (e) of the basic clause:

TRADE AGREEMENTS—ALTERNATE II (SEP 2019)

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

"Caribbean Basin country end product"—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that

are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia,

Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country end product" means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Least developed country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Nondesignated country end product" means any end product that is not a U.S.-made end product or a designated country end product.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of

section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made end product" means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"WTO GPA country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(e) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(f) The HTSUS is available on the Internet at http://www.usitc.gov/tata/hts/bychapter/index.htm. The following sections of the HTSUS provide information regarding duty-free status of articles specified in the definition of "Caribbean Basin country end product" within paragraph (a) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.

(End of clause)

252.225-7022 Reserved.

252.225-7023 Preference for Products or Services from Afghanistan.
As prescribed in 225.7703-4(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM AFGHANISTAN
(SEP 2013)

(a) *Definitions*. "Product from Afghanistan" and "service from Afghanistan," as used in this provision, are defined in the clause of this solicitation entitled "Requirement for Products or Services from Afghanistan" (DFARS 252.225-7024).

(b) *Representation*. The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Afghanistan or services from Afghanistan, except those listed in—

(1) Paragraph (c) of this provision; or

(2) Paragraph (c)(2) of the provision entitled "Trade Agreements Certificate," if included in this solicitation.

(c) *Other products or services*. The following offered products or services are not products from Afghanistan or services from Afghanistan:

(Line Item Number) (Country of Origin)

(d) *Evaluation*. For the purpose of evaluating competitive offers, the Contracting Officer will increase by 50 percent the prices of offers of products or services that are not products or services from Afghanistan.

(End of provision)

252.225-7024 Requirement for Products or Services from Afghanistan.
As prescribed in 225.7703-4(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

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

(1) "Product from Afghanistan" means a product that is mined, produced, or manufactured in Afghanistan.

(2) "Service from Afghanistan" means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract, unless, in its offer, it specified that it would provide products or services other than products from Afghanistan or services from Afghanistan.

(End of clause)

252.225-7025 Restriction on Acquisition of Forgings.
As prescribed in 225.7102-4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (DEC 2009)

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

(1) "Component" means any item supplied to the Government as part of an end product or of another component.

(2) "Domestic manufacture" means manufactured in the United States, its outlying areas; or Canada.

(3) "Forging items" means—

ITEMS	CATEGORIES
Ship propulsion shafts	Excludes service and landing craft shafts
Periscope tubes	All
Ring forgings for bull gears	All greater than 120 inches in diameter

(b) End products and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102-3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225-7026 Acquisition Restricted to Products or Services from Afghanistan.
As prescribed in 225.7703-4(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM AFGHANISTAN (SEP 2013)

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

(1) "Product from Afghanistan" means a product that is mined, produced, or manufactured in Afghanistan.

(2) "Service from Afghanistan" means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract.

(End of clause)

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales.
As prescribed in 225.7307(a), use the following clause.

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (APR 2003)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an

allowable cost, provided the fees are paid to—

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.

(End of clause)

252.225-7028 Exclusionary Policies and Practices of Foreign Governments.
As prescribed in 225.7307(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

252.225-7029 Acquisition of Uniform Components for Afghan Military or Afghan National Police.
As prescribed in 225.7703-4(d), use the following clause:

ACQUISITION OF UNIFORM COMPONENTS FOR AFGHAN MILITARY OR AFGHAN NATIONAL POLICE (SEP 2013)

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

"Textile component" means any item consisting of fibers, yarns, or fabric, supplied for incorporation into a uniform or a component of a uniform. It does not include items that do not contain fibers, yarns, or fabric, such as the metallic or plastic elements of buttons, zippers, or other clothing fasteners.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) As required by section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), the Contractor shall deliver under this contract only textile components that have been produced in the United States.

(c) There are no exceptions or waivers to this requirement.

(End of clause)

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.
As prescribed in 225.7011-3, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (DEC 2006)

(a) Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(1) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(2)(i) Will be delivered to the Government for use in a Government-owned facility or a facility under the control of the Department of Defense; or

(ii) Will be purchased by the Contractor for use in a Government-owned facility or a facility under the control of the Department of Defense.

(b) This restriction—

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used "as is" or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (e.g., a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

(End of clause)

252.225-7031 Secondary Arab Boycott of Israel.
As prescribed in 225.7605, use the following provision:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 2005)

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

(1) "Foreign person" means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) "United States" means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) "United States person" is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification*. If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.225-7032 Waiver of United Kingdom Levies—Evaluation of Offers. As prescribed in 225.1101(7), use the following provision:

WAIVER OF UNITED KINGDOM LEVIES – EVALUATION OF OFFERS
(APR 2003)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer

will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225-7033 Waiver of United Kingdom Levies.
As prescribed in 225.1101(8), use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (APR 2003)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW, Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

252.225-7034 Reserved.

252.225-7035 Buy American–Free Trade Agreements–Balance of Payments

Program Certificate.

Basic. As prescribed in 225.1101(9) and (9)(i), use the following provision:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—BASIC (NOV 2014)

(a) *Definitions*. "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Moroccan end product," "Panamanian end product," "Peruvian end product," "qualifying country end product," and "United States," as used in this provision,
have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program—Basic clause of this solicitation.

(b) *Evaluation*. The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Basic clause of this solicitation, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Basic clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate I. As prescribed in 225.1101(9) and (9)(ii), use the following provision, which uses "Canadian end product" in paragraph (a), rather than the phrases "Bahrainian end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Moroccan end product," "Panamanian end product," and "Peruvian end products" in paragraph (a) of the basic provision; uses "Canadian end products" in paragraphs (b)(2) and (c)(2)(i), rather than "Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision; and does not use "Australian or" in paragraph (c)(2)(i):

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE I (NOV 2014)

(a) *Definitions.* "Canadian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "foreign end product," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I clause of this solicitation, will evaluate offers of qualifying country end products or Canadian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate II. As prescribed in 225.1101(9) and (9)(iii), use the following provision, which adds "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" to paragraph (a), and uses different paragraphs (b)(2) and (c)(2)(i) than the basic provision:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE II (NOV 2014)

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Moroccan end product," "Panamanian end product," "Peruvian end product," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "United States," as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this solicitation, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate III. As prescribed in 225.1101(9) and (9)(iv), use the following provision, which uses different paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) than the basic provision:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE III (NOV 2014)

(a) *Definitions.* "Canadian end product," "commercially available off-the-shelf (COTS) item," "domestic end product," "foreign end product," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "United States," as used in this provision have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III clause of this solicitation, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate IV. As prescribed in 225.1101(9) and (9)(v), use the following provision, which adds "Korean end product" to paragraph (a) and uses "Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products" in paragraphs (b)(2) and (c)(2)(ii), rather than "Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE IV (NOV 2014)

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Korean end product," "Moroccan end product," "Panamanian end product," "Peruvian end product," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV clause of this solicitation, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

(Line Item Number) (Country of Origin (If known))

(End of provision)

Alternate V. As prescribed in 225.1101(9) and (9)(vi), use the following provision, which uses different paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) than the basic provision:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE—ALTERNATE V (APR 2019)

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Korean end product," "Moroccan end product," "Panamanian end product," "Peruvian end product," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "United States," as used in this provision, have the meanings given in the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American statute or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number) (Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number) (Country of Origin)

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of "domestic end product":

(Line Item Number) (Country of Origin (If known))

(End of provision)

252.225-7036 Buy American—Free Trade Agreements–Balance of Payments Program.

Basic. As prescribed in 225.1101(10)(i) and (10)(i)(A), use the following clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—BASIC (DEC 2017)

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

"Bahrainian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services

does not exceed the value of the product itself.

"Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Panamanian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Peruvian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium

Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I. As prescribed in 225.1101(10)(i) and (10)(i)(B), use the following clause, which adds "Canadian end product" to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE I (DEC 2017)

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

"Bahrainian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Canadian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from

another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Panamanian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Peruvian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country;

or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate II. As prescribed in 225.1101(10)(i) and (10)(i)(C), use the following clause, which adds "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE II (DEC 2017)

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

"Bahrainian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Panamanian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Peruvian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end

products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate III. As prescribed in 225.1101(10)(i) and (10)(i)(D), use the following clause, which adds "Canadian end product," "South Caucasus/Central and South Asian (SC/CASA) state," and "South Caucasus/Central and South Asian (SC/CASA) state end product" to paragraph (a) and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE III (DEC 2017)

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

"Bahrainian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Canadian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Panamanian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Peruvian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the

product itself.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate IV. As prescribed in 225.1101(10)(i) and (10)(i)(E), use the following clause, which adds "Korean end product" to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE IV (DEC 2017)

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

"Bahrainian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the

place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Korean end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Panamanian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Peruvian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark

Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate V. As prescribed in 225.1101(10)(i) and (10)(i)(F), use the following clause, which adds "Korean end product," "South Caucasus/Central and South Asian (SC/CASA) state," and "South Caucasus/Central and South Asian (SC/CASA) state end product" to paragraph (a), and uses a different paragraph (c) than the basic clause:

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM—ALTERNATE V (DEC 2017)

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

"Bahrainian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from

another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Korean end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Panamanian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Peruvian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from

another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia
Austria
Belgium
Canada
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Israel
Italy
Japan
Latvia
Luxembourg
Netherlands
Norway
Poland
Portugal
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(*1*) Components mined, produced, or manufactured in a qualifying country.

(*2*) Components mined, produced, or manufactured in the United States.

(*3*) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan

end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225-7037 Evaluation of Offers for Air Circuit Breakers.
As prescribed in 225.7006-4(a), use the following provision:

EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS (DEC 2018)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Australia, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States or its outlying areas, Australia, Canada, or the United Kingdom.

(End of provision)

252.225-7038 Restriction on Acquisition of Air Circuit Breakers.
As prescribed in 225.7006-4(b), use the following clause:

RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS (DEC 2018)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Australia, Canada, or the United Kingdom.

(End of clause)

252.225-7039 Defense Contractors Performing Private Security Functions Outside the United States.
As prescribed in 225.302-6, insert the following clause:

DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (JUN 2016)

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

"Full cooperation"—

(1) Means disclosure to the Government of the information sufficient to identify the nature and extent of the incident and the individuals responsible for

the conduct. It includes providing timely and complete response to Government auditors' and investigators' requests for documents and access to employees with information;

(2) Does not foreclose any contractor rights arising in law, the FAR or the terms of the contract. It does not require—

(i) The contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights; and

(3) Does not restrict the contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Private security functions" means the following activities engaged in by a contractor:

(1) Guarding of personnel, facilities, designated sites or property of a Federal agency, the contractor or subcontractor, or a third party.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of this contract.

(b) *Applicability*. If this contract is performed both in a designated area and in an area that is not designated, the clause only applies to performance in the designated area. Designated areas are areas outside the United States of—

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

(c) *Requirements*. The Contractor shall—

(1) Ensure that all Contractor personnel who are responsible for performing private security functions under this contract comply with 32 CFR part 159 and any orders, directives, or instructions to contractors performing private security functions that are identified in the contract for—

(i) Registering, processing, accounting for, managing, overseeing and keeping appropriate records of personnel performing private security functions;

(ii) Authorizing, accounting for and registering in Synchronized Predeployment and Operational Tracker (SPOT), weapons to be carried by or available to be used by personnel performing private security functions;

(iii) Identifying and registering in SPOT armored vehicles, helicopters and other military vehicles operated by Contractors performing private security functions; and

(iv) In accordance with orders and instructions established by the applicable Combatant Commander, reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by Contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that Contractor personnel who are responsible for performing private security functions under this contract are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough background checks) and security requirements established by 32 CFR part 159;

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable Combatant Commander or relevant Chief of Mission relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable Combatant Commander or relevant Chief of Mission for personnel performing private security functions;

(3) Provide full cooperation with any Government-authorized investigation of incidents reported pursuant to paragraph (c)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions under this contract by providing—

(i) Access to employees performing private security functions; and

(ii) Relevant information in the possession of the Contractor regarding the incident concerned; and

(4) Comply with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Company Operations—Requirements with Guidance or the International Standard ISO 18788, Management System for Private Security Operations—Requirements with Guidance (located at http://www.acq.osd.mil/log/PS/psc.html).

(d) *Remedies*. In addition to other remedies available to the Government—

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements of this clause or 32 CFR part 159. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract;

(2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of past performance; and

(3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period.

(e) *Rule of construction*. The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(f) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts, including subcontracts for commercial items, when private security functions will be performed outside the United States in areas of—

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

(End of clause)

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.
As prescribed in 225.371-5(a), use the following clause:

CONTRACTOR PERSONNEL SUPPORTING U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (OCT 2015)

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

"Combatant Commander" means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

"Contractors authorized to accompany the Force," or "CAAF," means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a letter of authorization. CAAF generally include all U.S. citizen n and

third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

"Designated operational area" means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

"Designated reception site" means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

"Law of war" means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

"Non-CAAF" means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

"Subordinate joint force commander" means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies to both CAAF and non-CAAF when performing in a designated operational area outside the United States to support U.S. Armed Forces deployed outside the United States in—

(i) Contingency operations;

(ii) Peace operations, consistent with Joint Publication 3-07.3; or

(iii) Other military operations or military exercises, when designated by the

Combatant Commander or as directed by the Secretary of Defense.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, Contractor personnel are only authorized to use force for individual self-defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel supporting the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.*

(1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized.

(3) Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)-generated letter of authorization signed by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract. Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

(d) *Compliance with laws and regulations*.

(1) The Contractor shall comply with, and shall ensure that its personnel supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(i) United States, host country, and third country national laws;

(ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;

(iii) United States regulations, directives, instructions, policies, and procedures; and

(iv) Orders, directives, and instructions issued by the Combatant Commander, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

(3) The Contractor shall ensure that CAAF and non-CAAF are aware—

(i) Of the DoD definition of "sexual assault" in DoD Directive 6495.01, Sexual Assault Prevention and Response Program;

(ii) That the offenses addressed by the definition are covered under the Uniform Code of Military Justice (see paragraph (e)(2)(iv) of this clause). Other sexual misconduct may constitute offenses under the Uniform Code of Military Justice, Federal law, such as the Military Extraterritorial Jurisdiction Act, or host nation laws; and

(iii) That the offenses not covered by the Uniform Code of Military Justice may nevertheless have consequences to the contractor employees (see paragraph (h)(1) of this clause).

(4) The Contractor shall report to the appropriate investigative authorities, identified in paragraph (d)(6) of this clause, any alleged offenses under—

(i) The Uniform Code of Military Justice (chapter 47 of title 10, United States Code) (applicable to contractors serving with or accompanying an armed force in the field during a declared war or contingency operations); or

(ii) The Military Extraterritorial Jurisdiction Act (chapter 212 of title 18, United States Code).

(5) The Contractor shall provide to all contractor personnel who will perform work on a contract in the deployed area, before beginning such work, information on the following:

(i) How and where to report an alleged crime described in paragraph (d)(4) of this clause.

(ii) Where to seek victim and witness protection and assistance available to contractor personnel in connection with an alleged offense described in paragraph (d)(4) of this clause.

(iii) That this section does not create any rights or privileges that are not authorized by law or DoD policy.

(6) The appropriate investigative authorities to which suspected crimes shall be reported include the following—

(i) US Army Criminal Investigation Command at http://www.cid.army.mil/reportacrime.html;

(ii) Air Force Office of Special Investigations at http://www.osi.andrews.af.mil/library/factsheets/factsheet.asp?id=14522;

(iii) Navy Criminal Investigative Service at http://www.ncis.navy.mil/Pages/publicdefault.aspx;

(iv) Defense Criminal Investigative Service at http://www.dodig.mil/HOTLINE/index.html;

(v) To any command of any supported military element or the command of any base.

(7) Personnel seeking whistleblower protection from reprisals for reporting criminal acts shall seek guidance through the DoD Inspector General hotline at 800-424-9098 or www.dodig.mil/HOTLINE/index.html. Personnel seeking other forms of victim or witness protections should contact the nearest military law enforcement office.

(8)(i) The Contractor shall ensure that Contractor employees supporting the U.S. Armed Forces are aware of their rights to—

(A) Hold their own identity or immigration documents, such as passport or driver's license, regardless of the documents' issuing authority;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

(G) Receive wages that are not below the legal host-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

(ii) The Contractor shall post these rights in employee work spaces in English and in any foreign language(s) spoken by a significant portion of the workforce.

(iii) The Contractor shall enforce the rights of Contractor personnel supporting the U.S. Armed Forces.

(e) *Preliminary personnel requirements.*

(1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

(i) All required security and background checks are complete and acceptable.

(ii) All CAAF deploying in support of an applicable operation—

(A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;

(B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue); and

(C) Have received all required immunizations as specified in the contract.

(1) During predeployment processing, the Government will provide,

at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All CAAF and selected non-CAAF, as specified in the statement of work, shall bring to the designated operational area a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as Approved by the World Health Organization, (also known as "shot record" or "Yellow Card") that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54E, DoD Foreign Clearance Program. For this purpose, CAAF are considered non-DoD contactor personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all CAAF. The basic training will be provided through—

(1) A military-run training center; or

(2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country

national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, *et seq*.);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a war crime when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) In time of declared war or a contingency operation, CAAF are subject to the jurisdiction of the Uniform Code of Military Justice under 10 U.S.C. 802(a)(10).

(v) Such employees are required to report offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(vi) Such employees will be provided victim and witness protection and assistance.

(f) *Processing and departure points*. CAAF shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of Contractor personnel and to ensure that all deployment requirements are met, including the requirements specified in paragraph (e)(1) of this clause;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a designated reception site (DRS) upon arrival at the deployed location. The DRS will validate personnel accountability, ensure that specific designated operational area entrance requirements are met, and brief Contractor personnel on theater-specific policies and procedures.

(g) *Personnel data.*

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, to enter and maintain the data for all CAAF and, as designated by USD(AT&L) or the Combatant Commander, non-CAAF supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause.

(2) The Contractor shall enter the required information about their contractor personnel prior to deployment and shall continue to use the SPOT web-

based system at https://spot.dmdc.mil to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the SPOT Business Rules at http://www.acq.osd.mil/log/PS/ctr_mgt_accountability.html.

(h) *Contractor personnel.*

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that Contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

(i) *Military clothing and protective equipment.*

(1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of Contractor

personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons*.

(1) If the Contractor requests that its personnel performing in the designated operational area be authorized to carry weapons for individual self-defense, the request shall be made through the Contracting Officer to the Combatant Commander, in accordance with DoD Instruction 3020.41, Operational Contractor Support. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If Contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will notify the Contractor what weapons and ammunition are authorized.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922;

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition;

(iv) Comply with applicable Combatant Commander and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses*. Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the designated operational area.

(l) *Purchase of scarce goods and services*. If the Combatant Commander has established an organization for the designated operational area whose function is to determine that certain items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation*.

(1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national Contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery*.

(1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, captured, or abducted Contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 3002.01E, Personnel Recovery in the Department of Defense.

(o) *Mortuary affairs*. Contractor personnel who die while in support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

(p) *Changes*. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in the place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts*. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Peace operations consistent with Joint Publication 3-07.3; or

(3) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(End of clause)

252.225-7041 Correspondence in English.
As prescribed in 225.1103(2), use the following clause:

CORRESPONDENCE IN ENGLISH (JUN 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

252.225-7042 Authorization to Perform.
As prescribed in 225.1103(3), use the following provision:

AUTHORIZATION TO PERFORM (APR 2003)

The offeror represents that it has been duly authorized to operate and to do business in the country or countries in which the contract is to be performed.

(End of provision)

252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States.
As prescribed in 225.372-2, use the following clause:

ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 2015)

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

(b) Except as provided in paragraph (c) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall—

(1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;

(2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;

(3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and

(4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(c) The requirements of this clause do not apply to any subcontractor that is—

(1) A foreign government;

(2) A representative of a foreign government; or

(3) A foreign corporation wholly owned by a foreign government.

(d) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from *(Contracting Officer to insert applicable information cited in PGI 225.372-1)*.

(End of clause)

252.225-7044 Balance of Payments Program--Construction Material.

Basic. As prescribed in 225.7503(a) and (a)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL—BASIC (NOV 2014)

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

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how

the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate "none"]

(End of clause)

Alternate I. As prescribed in 225.7503(a) and (a)(2), use the following clause, which adds definitions for "South Caucasus/Central and South Asian (SC/CASA) state" and

"SC/CASA state construction material" to paragraph (a), and uses "domestic construction material or SC/CASA state construction material" instead of "domestic construction material" in the second sentence of paragraph (b):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL—ALTERNATE I (NOV 2014)

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

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"SC/CASA state construction material" means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material or SC/CASA state construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate "none"].

(End of clause)

252.225-7045 Balance of Payments Program--Construction Material Under Trade Agreements.

Basic. As prescribed in 225.7503(b) and (b)(1), use the following clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—BASIC (AUG 2019)

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

"Caribbean Basin country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"Free Trade Agreement country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

"Least developed country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate "none"]

(End of clause)

Alternate I. As prescribed in 225.7503(b) and (b)(2), use the following clause, which adds "Bahrainian or Mexican construction material" to paragraph (a), and uses a different paragraph (b) and (c) than the basic clause:

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE I (AUG 2019)

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

"Bahrainian or Mexican construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of Bahrain or Mexico; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain or Mexico into a new and different construction material distinct from the materials from which it was transformed.

"Caribbean Basin country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe,

Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"Free Trade Agreement country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

"Least developed country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate "none"].

(End of clause)

Alternate II. As prescribed in 225.7503(b) and (b)(3), use the following clause, which adds "South Caucasus/Central and South Asian (SC/CASA) state" and "SC/CASA state construction material" to paragraph (a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE II (AUG 2019)

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

"Caribbean Basin country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak

Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"Free Trade Agreement country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

"Least developed country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"SC/CASA state construction material" means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate "none"].

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

Alternate III. As prescribed in 225.7503(b) and (b)(4), use the following clause, which adds "South Caucasus/Central and South Asian (SC/CASA state" and "SC/CASA state construction material" to paragraph(a), uses a different paragraph (b) and introductory text for paragraph (c) than the basic clause, and adds paragraph (d):

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS—ALTERNATE III (AUG 2019)

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

"Caribbean Basin country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), Ukraine, or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada,

Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"Free Trade Agreement country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

"Least developed country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"SC/CASA state construction material" means construction material that—

(i) Is wholly the growth, product, or manufacture of
An SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

_____

[Contracting Officer to list applicable excepted materials or indicate "none"].

(d) If the Contractor is from an SC/CASA state, the Contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

(End of clause)

252.225-7046 Exports by Approved Community Members in Response to the Solicitation.

As prescribed in 225.7902-5(a), use the following provision:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN RESPONSE TO THE SOLICITATION (JUNE 2013)

(a) *Definitions.* The definitions of "Approved Community", "defense articles", Defense Trade Cooperation (DTC) Treaty", "export", "Implementing Arrangement", "qualifying defense articles", "transfer", and "U.S. DoD Treaty-eligible requirements" in DFARS clause 252.225-7047 apply to this provision.

(b) All contract line items in the contemplated contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY
U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

_____

[*Enter Contract Line Item Number(s) or enter "None"*]

(c) Approved Community members responding to the solicitation may only export or transfer defense articles that specifically respond to the stated requirements of the solicitation.

(d) Subject to the other terms and conditions of the solicitation and the contemplated contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in preparing a response to this solicitation.

(e) Any conduct by an offeror responding to this solicitation that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and the implementing regulations of the Department of State in 22 CFR 126.16 (Australia), 22 C.F.R. 126.17 (United Kingdom), and 22 C.F.R. 126 Supplement No. 1 (exempted technologies list) is subject to all applicable International Traffic in Arms Regulations (ITAR) requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR.

(f) If the offeror uses the procedures established pursuant to the DTC Treaties, the offeror agrees that, with regard to the export or transfer of a qualifying defense article associated with responding to the solicitation, the offeror shall—

(1) Comply with the requirements and provisions of the applicable DTC Treaties, the Implementing Arrangements, and corresponding regulations (including the ITAR) of the U.S. Government and the government of Australia or of the United Kingdom, as applicable;

(2) Prior to the export or transfer of a qualifying defense article—

(i) Mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense articles provided with or developed pursuant to their responses to such solicitations, in

accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, as applicable, including any criminal, civil, and administrative penalties or sanctions contained therein; and

(g) *Representation.* The offeror shall check one of the following boxes and sign the representation:

□ The offeror represents that export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation and that such export(s) or transfer(s) complied with the requirements of this provision.

_____

Name/Title of Duly Authorized Representative Date

□ The offeror represents that no export(s) or transfer(s) of qualifying defense articles were made in preparing its response to this solicitation.

_____

Name/Title of Duly Authorized Representative Date

(h) *Subcontracts.* Flow down the substance of this provision, including this paragraph (h), but excluding the representation at paragraph (g), to any subcontractor at any tier intending to use the DTC Treaties in responding to this solicitation.

(End of provision)

252.225-7047 Exports by Approved Community Members in Performance of the Contract.

As prescribed in 225.7902-5(b), use the following clause:

EXPORTS BY APPROVED COMMUNITY MEMBERS IN PERFORMANCE OF THE CONTRACT (JUNE 2013)

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

"Approved Community" means the U.S. Government, U.S. entities that are registered and eligible exporters, and certain government and industry facilities in Australia or the United Kingdom that are approved and listed by the U.S. Government.

"Australia Community member" means an Australian government authority or nongovernmental entity or facility on the Australia Community list accessible at http://pmddtc.state.gov/treaties/index.html .

"Defense articles" means articles, services, and related technical data, including software, in tangible or intangible form, listed on the United States Munitions List of the International Traffic in Arms Regulations (ITAR), as modified or amended.

"Defense Trade Cooperation (DTC) Treaty" means—

(1) The Treaty Between the Government of the United States of America and the government of the United Kingdom of Great Britain and Northern Ireland concerning Defense Trade Cooperation, signed at Washington and London on June 21 and 26, 2007; or

(2) The Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed at Sydney on September 5, 2007.

"Export" means the initial movement of defense articles from the United States Community to the United Kingdom Community and the Australia community.

"Implementing Arrangement" means –

(1) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, signed on February 14, 2008; or

(2) The Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, signed on March 14, 2008.

"Qualifying defense articles" means defense articles that are not exempt from the scope of the DTC Treaties as defined in 22 CFR 126.16(g) and 22 CFR 126.17(g).

"Transfer" means the movement of previously exported defense articles within the Approved Community.

"United Kingdom Community member" means a United Kingdom government authority or nongovernmental entity or facility on the United Kingdom Community list accessible at http://pmddtc.state.gov.

"United States Community" means—

(1) Departments and agencies of the U.S. Government, including their personnel, with, as appropriate, security accreditation and a need-to-know; and

(2) Nongovernmental U.S. entities registered with the Department of State and eligible to export defense articles under U.S. law and regulation, including their employees, with, as appropriate, security accreditation and a need-to-know.

"U.S. DoD Treaty-eligible requirements" means any defense article acquired by the DoD for use in a combined military or counterterrorism operation, cooperative research, development, production or support program, or DoD end use, as described in Article 3 of the U.S.-U.K. DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement; and Article 3 of the U.S.-Australia DTC Treaty and sections 2 and 3 of the associated Implementing Arrangement.

(b) All contract line items in this contract, except any identified in this paragraph, are intended to satisfy U.S. DoD Treaty-eligible requirements. Specific defense articles that are not U.S. DoD Treaty-eligible will be identified as such in those contract line items that are otherwise U.S. DoD Treaty-eligible.

CONTRACT LINE ITEMS NOT INTENDED TO SATISFY
U.S. DoD TREATY-ELIGIBLE REQUIREMENTS:

_____

[*Enter Contract Line Item Number(s) or enter "None"*]

(c) Subject to the other terms and conditions of this contract that affect the acceptability of foreign sources or foreign end products, components, parts, or materials, Approved Community members are permitted, but not required, to use the DTC Treaties for exports or transfers of qualifying defense articles in performance of the contract.

(d) Any conduct by the Contractor that falls outside the scope of the DTC Treaties, the Implementing Arrangements, and 22 CFR 126.16(g) and 22 CFR 126.17(g) is subject to all applicable ITAR requirements, including any criminal, civil, and administrative penalties or sanctions, as well as all other United States statutory and regulatory requirements outside of ITAR, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 C.F.R. Parts 447, 478, and 479, which are unaffected by the DTC Treaties.

(e) If the Contractor is an Approved Community member, the Contractor agrees that—

(1) The Contractor shall comply with the requirements of the DTC Treaties, the Implementing Arrangements, the ITAR, and corresponding regulations of the U.S. Government and the government of Australia or the government of the United Kingdom, as applicable; and

(2) Prior to the export or transfer of a qualifying defense article the Contractor—

(i) Shall mark, identify, transmit, store, and handle any defense articles provided for the purpose of responding to such solicitations, as well as any defense

articles provided with or developed pursuant to their responses to such solicitations, in accordance with the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the marking and classification requirements described in the applicable regulations;

(ii) Shall comply with the re-transfer or re-export provisions of the DTC Treaties, the Implementing Arrangements, and corresponding regulations of the United States Government and the government of Australia or the government of the United Kingdom, as applicable, including, but not limited to, the re-transfer and re-export requirements described in the applicable regulations; and

(iii) Shall acknowledge that any conduct that falls outside or in violation of the DTC Treaties, Implementing Arrangements, and implementing regulations of the applicable government including, but not limited to, unauthorized re-transfer or re-export in violation of the procedures established in the applicable Implementing Arrangement and implementing regulations, remains subject to applicable licensing requirements of the government of Australia, the government of the United Kingdom, and the United States Government, including any criminal, civil, and administrative penalties or sanctions contained therein.

(f) The contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that may require exports or transfers of qualifying defense articles in connection with deliveries under the contract.

(End of clause)

252.225-7048 Export-Controlled Items.

As prescribed in 225.7901-4, use the following clause:

EXPORT CONTROLLED ITEMS (JUNE 2013)

(a) *Definition.* "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) "Items," defined in the EAR as "commodities", "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq*.);

(2) The Arms Export Control Act (22 U.S.C. 2751, *et seq*.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.

(End of clause)

252.225-7049 Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations.
As prescribed in 225.772-5(a),use the following provision:

PROHIBITION ON ACQUISITION OF CERTAIN FOREIGN COMMERCIAL SATELLITE SERVICES—REPRESENTATIONS (DEC 2018)

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

"Covered foreign country," "foreign entity," "government of a covered foreign country," "launch vehicle," "satellite services," and "state sponsor of terrorism" are defined in the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7051, Prohibition on Acquisition of Certain Commercial Satellite Services.

"Cybersecurity risk" means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)

(b) *Prohibition on award*. In accordance with 10 U.S.C. 2279, unless an exception is determined to apply in accordance with DFARS 225.772-4, no contract

for commercial satellite services may be awarded to—

(1)(i) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—

(A) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(B) The foreign entity plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country; or

(C) Entering into such contract would create an unacceptable cybersecurity risk for DoD; or

(ii) An offeror that is offering to provide the commercial satellite services of a foreign entity as described in paragraph (b)(1) of this section; or

(2)(i) Any entity, except as provided in paragraph (b)(2)(ii) of this provision, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite service will be provided using satellites that will be—

(A) Designed or manufactured—

(*1*) In a covered foreign country; or

(*2*) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(B) Launched outside the United States~~,~~ using a launch vehicle that is—

(*1*) Designed or manufactured in a covered foreign country; or

(*2*) Provided by—

(i) The government of a covered foreign country; or

(ii) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(ii) The prohibition in paragraph (b)(2)(i)(B) of this provision does not apply with respect to launch vehicles for which the satellite service provider has a contract or

other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(c) *Representations*. The Offeror represents that—

(1) It [ ] is, [ ] is not a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations. If affirmative, identify the covered foreign country:_____;

(2) It [ ] is, [ ] is not a foreign entity that plans to provide satellite services under the contract from a covered foreign country. If affirmative, identify the covered foreign country:_____;

(3) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations. If affirmative, identify the foreign entity and the covered foreign country:_____;

(4) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity that plans to or is expected to provide satellite services under the contract from a covered foreign country. If affirmative, identify the foreign entity and the covered foreign country:_____;

(5) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country:_____;

(6) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative, identify the entity, the covered foreign country, and the relationship of the entity to the government of the covered foreign country:_____;

(7) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country:_____;

(8) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by the government of a covered foreign country. If affirmative, identify the covered foreign country:_____; and

(9) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative, identify the entity, the covered foreign country, and the relationship of the entity to the government of the covered foreign country:_____.

(d) *Disclosure*. If the Offeror has responded affirmatively to any representation in paragraphs (c)(7) through (c)(9) of this provision, and if such launches are covered in whole or in part by a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services, provide the following information:

(1) The entity awarded the contract or other agreement:_____.

(2) The date the contract or other agreement was awarded:_____.

(3) The period of performance for the contract or other agreement:_____.

(e) The representations in paragraph (c) of this provision are a material representation of fact upon which reliance will be placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

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, use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2018)

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

"Government of a country that is a state sponsor of terrorism" includes the state and the government of a country that is a state sponsor of terrorism, as well as any political subdivision, agency, or instrumentality thereof.

"Significant interest" means—

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

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

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

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

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

"State sponsor of terrorism" means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria.

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

(1) The firm;
(2) A subsidiary of the firm; or
(3) Any other firm that owns or controls the firm.

(c) *Representation.* Unless the Offeror submits with its offer the disclosure required in paragraph (d) of this provision, the Offeror represents, by submission of its offer, that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in—

(1) The Offeror;
(2) A subsidiary of the Offeror; or
(3) Any other firm that owns or controls the Offeror.

(d) *Disclosure.*

(1) The Offeror shall disclose in an attachment to its offer if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in the Offeror; a subsidiary of the Offeror; or any other firm that owns or controls the Offeror.

(2) The disclosure shall include—

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

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

(End of provision)

252.225-7051 Prohibition on Acquisition of Certain Foreign Commercial Satellite Services.

As prescribed in 225.772-5, use the following clause:

PROHIBITION ON ACQUISITION OF CERTAIN FOREIGN COMMERCIAL SATELLITE SERVICES (DEC 2018)

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

"Covered foreign country" means—

(i) The People's Republic of China;

(ii) North Korea;

(iii) The Russian Federation; or

(iv) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

"Foreign entity" means—

(i) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(ii) Notwithstanding paragraph (i) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

"Government of a covered foreign country" includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

"Launch vehicle" means a fully integrated space launch vehicle. (10 U.S.C. 2279)

"Satellite services" means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

"State sponsor of terrorism" means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232)], to be a country the government of which has repeatedly provided

support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria. (10 U.S.C. 2327)

(b) *Limitation*. Unless specified in its offer, the Contractor shall not provide satellite services under this contract that—

(1) Are from a covered foreign country; or

(2) Except as provided in paragraph (c), use satellites that will be-

(i) Designed or manufactured—

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is designed or manufactured—

(A) In a covered foreign country; or

(B) Provided by—

(1) The government of a covered foreign country; or

(2) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(c) *Exception*. The limitation in paragraph (b)(2) shall not apply with respect to—

(1) A launch that occurs prior to December 31, 2022; or

(2) A satellite service provider that has a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(End of clause)

252.225-7052 Restriction on the Acquisition of Certain Magnets and Tungsten.

As prescribed in 225.7018-5, use the following clause:

RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS AND TUNGSTEN (APR 2019)

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

"Covered material" means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tungsten metal powder; and

(4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

"Covered country" means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran.

(b) *Restriction.*

(1) Except as provided in paragraph (c) of this clause, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).

(2) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(c) *Exceptions*. This clause does not apply—

(1) To an end item that is—

(i) A commercially available off-the-shelf item, other than—

(A) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(B) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;

(ii) An electronic device, unless otherwise specified in the contract; or

(iii) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018-4 of the Defense Federal Acquisition Regulation Supplement, that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

(End of clause)

(Revised September 13, 2019)

252.227-7000 Non-Estoppel.
As prescribed at 227.7009-1, insert the following clause in patent releases, license agreements, and assignments:

NON-ESTOPPEL (OCT 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227-7001 Release of Past Infringement.
As prescribed at 227.7009-2(a), insert the following clause in patent releases, license agreements, and assignments:

RELEASE OF PAST INFRINGEMENT (SEP 2019)

The Contractor hereby releases each and every claim and demand which the Contractor now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by the Contractor, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of *[description of subject matter]*.*

(End of clause)

*Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

252.227-7002 Readjustment of Payments.
As prescribed at 227.7009-2(b), insert the following clause in patent releases, license agreements, and assignments:

READJUSTMENT OF PAYMENTS (SEP 2019)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Contracting Officer in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under

this contract insofar as its arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; Provided, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7003 Termination.
As prescribed at 227.7009-2(c), insert the following clause in patent releases, license agreements, and assignments:

TERMINATION (AUG 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227-7004 License Grant.
As prescribed at 227.7009-3(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT (AUG 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____ Date _____

Application Serial No. _____ Filing Date _____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7005 License Term.
As prescribed at 227.7009-3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

LICENSE TERM (OCT 2001)

ALTERNATE I (AUG 1984)
The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

ALTERNATE II (OCT 2001)
The license hereby granted shall terminate on the _____ day of _____, ____; Provided, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

252.227-7006 License Grant—Running Royalty.
As prescribed at 227.7009-4(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT--RUNNING ROYALTY (AUG 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of _____, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of _____, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____ Date _____

Application Serial No. _____ Filing Date _____

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7007 License Term--Running Royalty.
As prescribed at 227.7009-4(b), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TERM--RUNNING ROYALTY (AUG 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

252.227-7008 Computation of Royalties.
As prescribed at 227.7009- 4(c), insert the following clause in patent releases, license agreements, and assignments:

COMPUTATION OF ROYALTIES (AUG 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of _____, at the rate of ____ percent of the net selling price of such articles or materials (amount) per (name of item) * whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of _____, "net selling price," as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

*Use bracketed matter as appropriate.

252.227-7009 Reporting and Payment of Royalties.
As prescribed at 227.7009-4(d), insert the following clause in patent releases, license agreements, and assignments:

REPORTING AND PAYMENT OF ROYALTIES (SEP 2019)

(a) The *[insert the Contracting Officer or the name of the designated office, in accordance with agency procedures]* shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending _____ during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending _____ shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided*, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the "License to Other Government Agencies" clause (if any) of this contract, an amount greater than _____ dollars ($_____), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

*The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

252.227-7010 License to Other Government Agencies.
As prescribed at 227.7009-4(e), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TO OTHER GOVERNMENT AGENCIES (AUG 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the "License Grant" clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided*, however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227-7011 Assignments.
As prescribed at 227.7010, insert the following clause in assignments.

ASSIGNMENT (AUG 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of _____, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation- in-part or continuation thereof):

U.S. Patent No. _____ Date _____

Name of Inventor _____

U.S. Application Serial No. _____ Filing Date _____

Name of Inventor _____

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227-7012 Patent License and Release Contract.
As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____ (Contract No.)

PATENT LICENSE AND RELEASE CONTRACT (SEP 1999)

THIS CONTRACT is effective as of the ____ day of *[month, year]*, between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ _____ (hereinafter called the Contractor), (a corporation organized and existing under the laws of the State of _____), (a partnership consisting of _____), (an individual trading as _____), of the City of _____, in the State of _____.

WHEREAS, the Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same, and

WHEREAS, this contract is authorized by law, including 10 U.S.C. 2386.

NOW THEREFORE, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

ARTICLE l. License Grant.*
(Insert the clause at 252.227-7004 for a paid up license, or the clause at 252.227-7006 for a license on a running royalty basis.)

ARTICLE 2. License Term.*
(Insert the appropriate alternative clause at 252.227-7005 for a paid up license, or the clause at 252.227-7007 for a license on a running royalty basis.)

ARTICLE 3. Release of Past Infringement.
(Insert the clause at 252.227-7001.)

ARTICLE 4. Non-Estoppel.
(Insert the clause at 252.227-7000.)

ARTICLE 5. Payment.
The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227-7006 in accordance with the

instructions therein, and also the clause as specified at 252.227-7002 and 252.227-7009 and 252.227-7010.)

ARTICLE 6. Covenant Against Contingent Fees.
(Insert the clause at FAR 52.203-5.)

ARTICLE 7. Assignment of Claims.
(Insert the clause at FAR 52.232-23.)

ARTICLE 8. Gratuities.
(Insert the clause at FAR 52.203-3.)

ARTICLE 9. Disputes.
(Insert the clause at FAR 52.233-1.)

ARTICLE 10. Successors and Assignees.
This Agreement shall be binding upon the Contractor, its successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By _____
Date _____
(Signature and Title of Contractor
Representative) _____
By _____
Date _____

*If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227-7011.

**When the Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

(End of clause)

252.227-7013 Rights in Technical Data--Noncommercial Items.
As prescribed in 227.7103-6(a), use the following clause:

RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (FEB 2014)

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

(1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

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

(4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(6) "Detailed manufacturing or process data" means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) "Developed" means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

(10) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) "Government purpose rights" means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(14) "Limited rights" means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(*2*) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

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

(16) "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) *Government purpose rights*.

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) *Limited rights.*

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(iv) The Contractor acknowledges that—

(A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-

Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(4) *Specifically negotiated license rights*. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights*. Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability*. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) *Contractor rights in technical data*. All rights not granted to the Government are retained by the Contractor.

(d) *Third party copyrighted data*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure*.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

Technical Data to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*If the assertion is applicable to items, components, or processes developed at private expense, identify both the data and each such item, component, or process.

**Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____
Printed Name and Title _____
_____
Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions*. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings*. Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings*. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

LIMITED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.*

(i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____(Insert contract number)____, License No. ____(Insert license identifier)____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing data markings*. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records*. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified technical data markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data markings.* A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data.*

(1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) *Applicability to subcontractors or suppliers.*

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUN 1995)
As prescribed in 227.7103-6(b)(1), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

(1) This paragraph only applies to technical data in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for

sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

ALTERNATE II (MAR 2011)
As prescribed in 227.7103-6(b)(2), add the following paragraphs (a)(17) and (b)(7) to the basic clause:

(a)(17) "Vessel design" means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq*.

(b)(7) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
As prescribed in 227.7203-6(a)(1), use the following clause:

RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014)

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

(1) "Commercial computer software" means software developed or regularly used for non-governmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) "Computer database" means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) "Computer program" means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(7) "Developed" means that—

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

(10) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(12) "Government purpose rights" means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(13) "Minor modification" means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(14) "Noncommercial computer software" means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(15) "Restricted rights" apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi) and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

(16) "Unlimited rights" means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) *Government purpose rights*.

(i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) *Restricted rights*.

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(4) *Specifically negotiated license rights*.

(i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14) of the Rights in Technical Data--Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights*. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability*. The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(15) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party

who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.*

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

Computer Software			Name of Person

to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____
Printed Name and Title _____
_____
Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

(f) *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions*. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of

the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings*. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Restricted rights markings*. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.*

(i) Computer software or computer software documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____(Insert contract number)____, License No. ____(Insert license identifier)____. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at

the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings*. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation*.

(1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) *Applicability to subcontractors or suppliers*.

(1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier

subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUN 1995)
As prescribed in 227.7203-6(a)(2), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

(1) This paragraph only applies to computer software or computer software documentation in which the Government has obtained unlimited rights or a license to make an unrestricted release of the software or documentation.

(2) The Government shall not publish a deliverable item or items of computer software or computer software documentation identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such software or documentation on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such software or documentation, or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published software or documentation.

(3) This limitation on the Government's right to publish for sale shall continue as long as the software or documentation are reasonably available to the public for purchase.

252.227-7015 Technical Data–Commercial Items.
As prescribed in 227.7102-4(a)(1), use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (FEB 2014)

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

(1) "Commercial item" does not include commercial computer software.

(2) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(3) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(4) The term "item" includes components or processes.

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

(b) *License.*

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement; and

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(c) *Additional license rights*. The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability*. The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(e) *Applicability to subcontractors or suppliers*.

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320 and 10 U.S.C. 2321.

(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the clause at 252.227-7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

(End of clause)

ALTERNATE I (DEC 2011)
As prescribed in 227.7102-4(a)(2), add the following paragraphs (a)(6) and (b)(4) to the basic clause:

(a)(6) "Vessel design" means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq*.

(b)(4) *Vessel designs*. For a vessel design (including a vessel design embodied in auseful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

252.227-7016 Rights in Bid or Proposal Information.
As prescribed in 227.7103-6(e)(1), 227.7104(e)(1), or 227.7203-6(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011)

(a) *Definitions*.

(1) For contracts that require the delivery of technical data, the terms “technical data” and “computer software” are defined in the Rights in Technical Data--Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program, the Rights

in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause of this contract.

(b *Government rights prior to contract award*. By submission of its offer, the Offeror agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) *Government rights subsequent to contract award*. The Contractor agrees—

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data--Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause(s) of this contract.

(d) *Government-furnished information*. The Government's rights with respect to technical data or computer software contained in the Contractor's bid or proposal that were provided to the Contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e*) Information available without restrictions*. The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) *Flowdown*. The Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions.

As prescribed in 227.7103-3(b), 227.7104(e)(2), or 227.7203-3(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JAN 2011)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation—

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data--Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovation Research Program, the notification and identification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers, shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software			Name of Person

to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Asserting Restrictions****
(LIST)*****	(LIST)	(LIST)	(LIST)

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

Date _____
Printed Name and Title _____
_____
Signature _____

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

(End of provision)

252.227-7018 Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program.
As prescribed in 227.7104(a), use the following clause:

RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE--SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (FEB 2014)

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

(1) "Commercial computer software" means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) "Computer database" means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) "Computer program" means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to the technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(7) "Detailed manufacturing or process data" means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(8) "Developed" means—

(i) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iv) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(9) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(10) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

(11) "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a

government contract, and partially with costs charged directly to a government contract.

(12) "Form, fit, and function data" means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(13) "Generated" means technical data or computer software first created in the performance of this contract.

(14) "Government purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

(15) "Limited rights" means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The production, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor in performance of its covered Government support contracts for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(*2*) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(16) "Minor modification" means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

(17) "Noncommercial computer software" means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(18) "Restricted rights" apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(18)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(18)(ii), (v), (vi), and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of Government contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to the paragraph (a)(18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(18)(i) through (iv) of this clause.

(19) "SBIR data rights" means the Government's rights during the SBIR data protection period (specified in paragraph (b)(4) of this clause) to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated under a SBIR award as follows:

(i) Limited rights in such SBIR technical data; and

(ii) Restricted rights in such SBIR computer software.

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

(21) "Unlimited rights" means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data and computer software*. The Contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data or noncommercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights*. The Government shall have unlimited rights in technical data, including computer software documentation, or computer software generated under this contract that are—

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Data or software in which the Government has acquired previously unlimited rights under another Government contract or through a specific license; and

(vi) SBIR data upon expiration of the SBIR data rights period.

(2) *Limited rights*. The Government shall have limited rights in technical data, that were not generated under this contract, pertain to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (f)(1) of this clause, with the legend prescribed in paragraph (f)(2) of this clause.

(3) *Restricted rights in computer software*. The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

(4) *SBIR data rights*. Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights in all technical data or computer software generated under this contract during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.

(5) *Specifically negotiated license rights*. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(4) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software than are enumerated in paragraph (a)(18) of this

clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(6) *Prior government rights*. Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(7) *Release from liability*. The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with paragraph (a)(14), (a)(17), or (b)(4) of this clause, or in accordance with the terms of a license negotiated under paragraph (b)(5) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

(8) *Covered Government support contractors*. The Contractor acknowledges that—

(i) Limited rights technical data and restricted rights computer software are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions as identified in a restrictive legend) regarding the covered Government support contractor's use of such data or software, or alternatively that the Contractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement; and

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data or software as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(c) *Rights in derivative computer software or computer software documentation*. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

(d) *Third party copyrighted technical data and computer software*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (b) of this clause and, prior to delivery of such—

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure.*

(1) This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____
Printed Name and Title _____
_____
Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

(f) *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (f)(6) of this clause, only the following markings are authorized under this contract: the limited rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause, the SBIR data rights legend at paragraph (f)(4) of this clause, or the special license rights legend at paragraph (f)(5) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions*. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a

restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Limited rights markings*. Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

LIMITED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(3) *Restricted rights markings*. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *SBIR data rights markings*. Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(5) of this clause, technical data or computer software generated under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR data rights period on the legend:

SBIR DATA RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration of SBIR Data Rights Period _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software–Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(5) *Special license rights markings*.

(i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract No. _____(Insert contract number)____, License No. ____(Insert license identifier)____. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(6) of this clause).

(6) *Pre-existing data markings*. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those

restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records*. Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(h) *Removal of unjustified and nonconforming markings*.

(1) *Unjustified markings*. The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions–Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings*. A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data or computer software*.

(1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(k) *Applicability to subcontractors or suppliers.*

(1) The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes required by paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUN 1995)
As prescribed in 227.7104(d), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

(1) This paragraph applies only to technical data or computer software delivered to the Government with SBIR data rights.

(2) Upon expiration of the SBIR data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor, prior to the expiration of the SBIR data rights period, or within two years following delivery of the data or software item, or within twenty-four months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the technical data or computer software are reasonably available to the public for purchase.

252.227-7019 Validation of Asserted Restrictions--Computer Software.
As prescribed in 227.7104(e)(3) or 227.7203-6(c), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE
(SEP 2016)

(a) *Definitions.*

(1) As used in this clause, unless otherwise specifically indicated, the term "Contractor" means the Contractor and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) *Direct contact with subcontractors or suppliers.* The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(d) *Requests for information.*

(1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the—

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor's expense; or

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that Contractor's expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) *Government right to challenge and validate asserted restrictions*.

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Challenge procedures*.

(1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (f)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing any available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the Contractor a reasonable opportunity for responding to each challenge.

(g) *Contractor appeal—Government obligation.*

(1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer's final decision if, within the first ninety (90) days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has:

(A) appealed to the Board of Contract Appeals or filed suit an appropriate court within ninety (90) days; or

(B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(h) *Final disposition of appeal or suit.* If the Contractor appeals or files suit and if,

upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the Contractor's expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor in defending the restriction.

(i) *Flowdown*. The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

252.227-7020 Rights in Special Works.
As prescribed in 227.7105-3, 227.7106(a) or 227.7205(a), use the following clause:

RIGHTS IN SPECIAL WORKS (JUN 1995)

(a) *Applicability*. This clause applies to works first created, generated, or produced and required to be delivered under this contract.

(b) *Definitions*. As used in this clause:

(1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

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

(4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) "Unlimited rights" means the rights to use, modify, reproduce, perform, display, release, or disclose a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(6) The term "works" includes computer data bases, computer software, or computer software documentation; literary, musical, choreographic, or dramatic compositions; pantomimes; pictorial, graphic, or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

(c) *License rights*.

(1) The Government shall have unlimited rights in works first produced, created, or generated and required to be delivered under this contract.

(2) When a work is first produced, created, or generated under this contract, and such work is required to be delivered under this contract, the Contractor shall assign copyright in those works to the Government. The Contractor, unless directed to the contrary by the Contracting Officer, shall place the following notice on such works:

"© (Year date of delivery) United States Government, as represented by the Secretary of (department). All rights reserved."

For phonorecords, the "©" marking shall be replaced by a "P".

(3) The Contractor grants to the Government a royalty-free, world-wide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Contractor's copyrighted works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

(d) *Third party copyrighted data*. The Contractor shall not incorporate, without the written approval of the Contracting Officer, any copyrighted works in the works to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license of the scope identified in paragraph (c)(3) of this clause and, prior to delivery of such works—

(1) Has affixed to the transmittal document a statement of the license rights obtained; or

(2) For computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Indemnification*. The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, use,

modification, reproduction, release, performance, display, or disclosure of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) *Government-furnished information.* Paragraphs (d) and (e) of this clause are not applicable to information furnished to the Contractor by the Government and incorporated in the works delivered under this contract.

(End of clause)

252.227-7021 Rights in Data--Existing Works.
As prescribed at 227.7105-2(a), use the following clause:

RIGHTS IN DATA—EXISTING WORKS (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 Government Rights (Unlimited).
As prescribed at 227.7107-1(a) use the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 Drawings and Other Data to Become Property of Government.
As prescribed at 227.7107-1(b), use the following clause:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 Notice and Approval of Restricted Designs.
As prescribed at 227.7107-3, use the following clause:

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
As prescribed in 227.7103-6(c), 227.7104(f)(1), or 227.7203-6(d), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAY 2013)

(a)(1) For contracts in which the Government will furnish the Contractor with technical data, the terms "covered Government support contractor," "limited rights," and "Government purpose rights" are defined in the clause at 252.227-7013, Rights in Technical Data–Noncommercial Items.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms "covered Government support contractor," "government purpose rights," and "restricted rights"

are defined in the clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms "covered Government support contractor," "limited rights," "restricted rights," and "SBIR data rights" are defined in the clause at 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited rights, restricted rights, or SBIR data rights legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103-7.

(3) *GFI marked with specially negotiated license rights legends.*

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at 227.7103-7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) *Covered Government support contractors.* If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii), the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

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

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(d) The Contractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

(End of clause)

252.227-7026 Deferred Delivery of Technical Data or Computer Software.
As prescribed at 227.7103-8(a), use the following clause:

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE
(APR 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 Deferred Ordering of Technical Data or Computer Software.
As prescribed at 227.7103-8(b), use the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
(APR 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other

than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7028 Technical Data or Computer Software Previously Delivered to the Government.
As prescribed in 227.7103-6(d), 227.7104(f)(2), or 227.7203-6(e), use the following provision:

TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

252.227-7029 Reserved.

252.227-7030 Technical Data--Withholding of Payment.
As prescribed at 227.7103-6(e)(2) or 227.7104(e)(4), use the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT (MAR 2000)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(e)(2) or 252.227-7018(e)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent

(10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 Reserved.

252.227-7032 Rights in Technical Data and Computer Software (Foreign).
As prescribed in 227.7103-17, use the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN)
(JUN 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

252.227-7033 Rights in Shop Drawings.
As prescribed at 227.7107-1(c), use the following clause:

RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

252.227-7034 Reserved.

252.227-7035 Reserved.

252.227-7036 Reserved.

252.227-7037 Validation of Restrictive Markings on Technical Data.

As prescribed in 227.7102-4(c), 227.7103-6(e)(3), 227.7104(e)(5), or 227.7203-6(f), use the following clause:

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(b) *Presumption regarding development exclusively at private expense.*

(1) *Commercial items.*

(i) Except as provided in paragraph (b)(2) of this clause, the Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense.

(ii) The Contracting Officer will not challenge such assertions unless the Contracting Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.

(2) *Major weapon systems.* In the case of a challenge to a use or release restriction that is asserted with respect to data of the Contractor or a subcontractor for a major weapon system or a subsystem or component thereof on the basis that the major weapon system, subsystem, or component was developed exclusively at private expense—

(i) The presumption in paragraph (b)(1) of this clause applies to—

(A) A commercial subsystem or component of a major weapon system, if the major weapon system was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(a));

(B) A component of a subsystem, if the subsystem was acquired as a commercial item in accordance with DFARS subpart 234.70 (10 U.S.C. 2379(b)); and

(C) Any other component, if the component is a commercially available off-the-shelf item or a commercially available off-the-shelf item with modifications of a type customarily available in the commercial marketplace or minor modifications made to meet Federal Government requirements; and

(ii) In all other cases, the challenge to the use or release restriction will be sustained unless information provided by the Contractor or a subcontractor demonstrates that the item or process was developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (b)(1) of this clause, the Contractor or subcontractor shall be

prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.*

(1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) *Challenge.*

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with paragraph (b) of this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds.*

(1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require.

The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) *Final disposition of appeal or suit.*

(1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(j) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(k) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

(End of clause)

252.227-7038 Patent Rights—Ownership by the Contractor (Large Business).

As prescribed in 227.303(2), use the following clause:

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012)

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

"Invention" means—

(1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

"Made"—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

"Nonprofit organization" means—

(1) A university or other institution of higher education;

(2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or

(3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application" means—

(1)(i) To manufacture, in the case of a composition or product;

(ii) To practice, in the case of a process or method; or

(iii) To operate, in the case of a machine or system; and

(2) In each case, under such conditions as to establish that—

(i) The invention is being utilized; and

(ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention" means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor's rights.*

(1) *Ownership.* The Contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License.*

(i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license—

(A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part;

(B) Includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at the time of contract award; and

(C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The agency—

(A) May revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency—

(A) Will furnish the Contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the Contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The Contractor has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) *Contractor's obligations.*

(1) The Contractor shall—

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters, or within 6 months after the Contractor first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure—

(A) The inventor(s) and the contract under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall—

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) *Government's rights.*

(1) *Ownership*. The Contractor shall assign to the agency, upon written request, title to any subject invention—

(i) If the Contractor elects not to retain title to a subject invention;

(ii) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Contractor's failure to report or elect within the specified times;

(iii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country; and

(iv) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License.* If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest.*

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall—

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to—

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention."

(5) The Contractor shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of—

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor shall, when licensing a subject invention, arrange to—

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be

specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The Contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) The Contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the Contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The Contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) *Reporting on utilization of subject inventions.*

(1) The Contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Contractor's permission, if the data or information is considered by the Contractor or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the Contractor or its assignee that—

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) *Withholding of payment (this paragraph does not apply to subcontracts).*

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this contract before the Contractor delivers to the Contracting Officer—

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being

withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) *Subcontracts.*

(1) The Contractor—

(i) Shall include the substance of the Patent Rights—Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier—

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

(End of clause)

ALTERNATE I (DEC 2007).
As prescribed in 227.303(2)(ii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: _____*.

[Contracting Officer to complete with the names of applicable existing treaties or international agreements. This paragraph is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

ALTERNATE II (DEC 2007).
As prescribed in 227.303(2)(iii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The agency reserves the right to—

(A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date

of this contract; and

(B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.

252.227-7039 Patents--Reporting of Subject Inventions.
As prescribed in 227.303(1), use the following clause:

PATENTS—REPORTING OF SUBJECT INVENTIONS (APR 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

(Revised September 13, 2019)

252.237-7000 Notice of Special Standards of Responsibility.
As prescribed in 237.270(d)(1), use the following provision:

NOTICE OF SPECIAL STANDARDS OF RESPONSIBILITY (DEC 1991)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104-1 and the following criteria, as described in Chapter 3, General Standards, of "Government Auditing Standards."

(1) Qualifications;

(2) Independence; and

(3) Quality Control.

(b) "Government Auditing Standards" is issued by the Comptroller General of the United States and is available for sale from the:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20401

Stock number 020-000-00243-3.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

252.237-7001 Compliance with Audit Standards.
As prescribed in 237.270(d)(2), use the following clause:

COMPLIANCE WITH AUDIT STANDARDS (MAY 2000)

The Contractor, in performance of all audit services under this contract, shall comply with "Government Auditing Standards" issued by the Comptroller General of the United States.

(End of clause)

252.237-7002 Reserved.

252.237-7003 Requirements.
As prescribed in 237.7003(a) and (a)(1), use the following clause:

REQUIREMENTS (DEC 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

(2) The quantities to be furnished;

(3) Delivery or performance dates;

(4) Place of delivery or performance;

(5) Packing and shipping instructions;

(6) The address to send invoices; and

(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

_____

_____

_____

(End of clause)

252.237-7004 Area of Performance.
As prescribed in 237.7003(a) and (a)(2), use the following clause:

AREA OF PERFORMANCE (DEC 1991)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237-7005 Performance and Delivery.
As prescribed in 237.7003(a) and (a)(3), use the following clause:

PERFORMANCE AND DELIVERY (DEC 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237-7006 Subcontracting.
As prescribed in 237.7003(a) and (a)(4), use the following clause:

SUBCONTRACTING (DEC 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

252.237-7007 Termination for Default.
As prescribed in 237.7003(a) and (a)(5), use the following clause:

TERMINATION FOR DEFAULT (DEC 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

252.237-7008 Group Interment.
As prescribed in 237.7003(a) and (a)(6), use the following clause:

GROUP INTERMENT (DEC 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

252.237-7009 Permits.
As prescribed in 237.7003(a) and (a) (7), use the following clause:

PERMITS (DEC 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237-7010 Prohibition on Interrogation of Detainees by Contractor Personnel.
As prescribed in 237.173-5, use the following clause:

PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR

PERSONNEL (JUN 2013)

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

"Detainee" means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

"Interrogation of detainees" means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

(b) Contractor personnel shall not interrogate detainees.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

252.237-7011 Preparation History.
As prescribed in 237.7003(a) and (a)(8), use the following clause:

PREPARATION HISTORY (DEC 1991)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237-7012 Instruction to Offerors (Count-of-Articles).
As prescribed in 237.7101(a), use the following provision:

INSTRUCTION TO OFFERORS (COUNT-OF-ARTICLES) (DEC 1991)

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate offers based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7013 Instruction to Offerors (Bulk Weight).
As prescribed in 237.7101(b), use the following provision:

INSTRUCTION TO OFFERORS (BULK WEIGHT) (DEC 1991)

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237-7014 Loss or Damage (Count-of-Articles).
As prescribed in 237.7101(c), use the following clause:

LOSS OR DAMAGE (COUNT-OF-ARTICLES) (DEC 1991)

(a) The count-of-articles will be—

(1) The count of the Contracting Officer; or

(2) The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall—

(1) Be liable for return of the number and kind of articles furnished for service under this contract; and

(2) Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

252.237-7015 Loss or Damage (Weight of Articles).
As prescribed in 237.7101(d), use the following clause:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (DEC 1991)

(a) The Contractor shall—

(1) Be liable for return of the articles furnished for service under this contract; and

(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government _____ per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is _____ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

252.237-7016 Delivery Tickets.

Basic. As prescribed in 237.7101(e) and (e)(1), use the following clause:

DELIVERY TICKETS—BASIC (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

Alternate I. As prescribed in 237.7101(e) and (e)(2), use the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause:

DELIVERY TICKETS—ALTERNATE I (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

(End of clause)

Alternate II. As prescribed in 237.7101(e) and (e)(3), use the following clause, which includes paragraphs (c), (d), and (e) not included in the basic clause:

DELIVERY TICKETS—ALTERNATE II (NOV 2014)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

(End of clause)

252.237-7017 Individual Laundry.
As prescribed in 237.7101(f), use the following clause:

INDIVIDUAL LAUNDRY (DEC 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the "Estimated Quantity" column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows—

(1) Bundle consisting of 26 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(2) Bundle consisting of 13 pieces, including laundry bag. This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(End of clause)

252.237-7018 Special Definitions of Government Property.
As prescribed in 237.7101(g), use the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (DEC 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

252.237-7019 Training for Contractor Personnel Interacting with Detainees. As prescribed in 237.171-4, use the following clause:

TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES
(JUN 2013)

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

"Combatant Commander" means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

"Detainee" means a person in the custody or under the physical control of the Department of Defense on behalf of the United States Government as a result of armed conflict or other military operation by United States armed forces.

"Personnel interacting with detainees" means personnel who, in the course of their duties, are expected to interact with detainees.

(b) *Training requirement*. This clause implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

(1) The Combatant Commander responsible for the area where a detention or interrogation facility is located will arrange for training to be provided to contractor personnel interacting with detainees. The training will address the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions. The Combatant Commander will arrange for a training receipt document to be provided to personnel who have completed the training.

(2)(i) The Contractor shall arrange for its personnel interacting with detainees to—

(A) Receive the training specified in paragraph (b)(1) of this clause—

(1) Prior to interacting with detainees, or as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training; and

(2) Annually thereafter; and

(B) Provide a copy of the training receipt document specified in paragraph (b)(1) of this clause to the Contractor for retention.

(ii) To make these arrangements, the following points of contact apply:

[Contracting Officer to insert applicable point of contact information cited in PGI 237.171-3(b).]

(3) The Contractor shall retain a copy of the training receipt document(s) provided in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed, or 3 years after all work required by the contract has been completed and accepted by the Government, whichever is sooner.

(c) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

(End of clause)

252.237-7020 Reserved.

252.237-7021 Reserved.

252.237-7022 Services at Installations Being Closed.
As prescribed in 237.7402, use the following clause:

SERVICES AT INSTALLATIONS BEING CLOSED (MAY 1995)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of such government.

(End of clause)

252.237-7023 Continuation of Essential Contractor Services.
As prescribed in 237.7603(a), use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

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

(1) "Essential contractor service" means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

(2) "Mission-essential functions" means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect DoD's ability to provide vital services or exercise authority, direction, and control.

(b) The Government has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission essential functions. These services are listed in attachment __, Mission-Essential Contractor Services, dated _____.

(c)(1) The Mission-Essential Contractor Services Plan submitted by the Contractor, is incorporated in this contract.

(2) The Contractor shall maintain and update its plan as necessary. The Contractor shall provide all plan updates to the Contracting Officer for approval.

(3) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(d)(1) Notwithstanding any other clause of this contract, the contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the Contracting Officer), in accordance with its Mission-Essential Contractor Services Plan.

(2) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in accordance with paragraph (b) of this section during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(e) The Government reserves the right in such crisis situations to use Federal employees, military personnel or contract support from other contractors, or to enter into new contracts for essential contractor services.

(f) Changes. The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor's notice shall

include the Contractor's proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price, delivery schedule, or both as soon as is practicable after receipt of the Contractor's proposal.

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in subcontracts for the essential services.

(End of Clause)

252.237-7024 Notice of Continuation of Essential Contractor Services.
As prescribed in 237.7603(b), use the following provision:

NOTICE OF CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) *Definitions.* "Essential contractor service" and "mission-essential functions" have the meanings given in the clause at 252.237-7023, Continuation of Essential Contractor Services, in this solicitation.

(b) The offeror shall provide with its offer a written plan describing how it will continue to perform the essential contractor services listed in attachment ___, Mission Essential Contractor Services, dated _____, during periods of crisis. The offeror shall–

(1) Identify provisions made for the acquisition of essential personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) Address in the plan, at a minimum—

(i) Challenges associated with maintaining essential contractor services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of essential personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home;

(iv) Any established alert and notification procedures for mobilizing identified "essential contractor service" personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(End of provision)

(Revised September 13, 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:

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 (SEP 2019)

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

"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 that creates the regulatory body are not governmental regulatory bodies.

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

(1) Commencing performance after receipt of an order; or

(2) Written acceptance by a duly authorized representative.

(c) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with all applicable tariffs, rates, charges, regulations, requirements, terms, and conditions of—

(1) Service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(2) Service as lawfully established by a governmental regulatory body.

(d) The Government will not prepay for services.

(e) 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.

(f) 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.

(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)

252.239-7005 Reserved.

252.239-7006 Tariff Information.
As prescribed in 239.7411(a), use the following clause:

TARIFF INFORMATION (JUL 1997)

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

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

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

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

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

(End of clause)

252.239-7007 Cancellation or Termination of Orders.
As prescribed in 239.7411(a), use the following clause:

CANCELLATION OR TERMINATION OF ORDERS (SEP 2019)

(a) *Definitions.*

"Actual nonrecoverable costs" means the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value.

"Basic cancellation liability" means the actual nonrecoverable cost, which the Government shall reimburse the Contractor at the time services are cancelled.

"Basic termination liability" means the nonrecoverable cost amortized in equal monthly increments throughout the liability period.

"Installed costs" means 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.

"Net salvage value" means the salvage value less the cost of removal.

(b) 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 will 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. The Government will not reimburse the Contractor for any actual nonrecoverable costs incurred after notice of award, but prior to execution of the order.

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

(d) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government will have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under this clause. The basic cancellation liability or 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 recurring charges shall continue to be paid during the period.

(e) 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 liability or basic 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.

(f) 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.

(g) 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.

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

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

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

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

(4) The net salvage value shall be deducted from the Contractor's installed cost. In determining net salvage value, the Contractor shall consider the foreseeable reuse of the facilities and equipment by the Contractor. The Contractor shall make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either for the sale of facilities or their reuse by the Contractor in another location.

(5) Upon termination of services, the Government will reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated and establish the liability period as mutually agreed to but not to exceed ten years. In the case of either a cancellation or a termination, the Government's presumed maximum liability will be capped by the unpaid non-recurring charges and the monthly recurring charges set out in the contract/agreement. The presumed maximum liability for monthly recurring charges shall be capped at monthly recurring charges for the minimum service period and any required notice period.

(6) When the basic cancellation liability or basic 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 cancellation or termination.

(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 nonsalvable 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.

(i) 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 the Contracting Officer determines that the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(j) 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 Reserved.

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.

(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:

CLOUD 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.

"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, 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.

(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 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

(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)

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.

(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 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 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)

(Revised September 13, 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 Reserved.

252.247-7002 Revision of Prices.
As prescribed in 247.270-4(b), use the following clause:

REVISION OF PRICES (DEC 1991)

(a) *Definition.* "Wage adjustment," as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

(1) Substantially affects the cost of performing this contract;

(2) Is generally applicable to the port where work under this contract is performed; and

(3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.*

(1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) *Submission of data.* At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.*

(1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.* If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.*

(1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

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 Reserved.

252.247-7005 Reserved.

252.247-7006 Reserved.

252.247-7007 Liability and Insurance.
As prescribed in 247.270-4(c), use the following clause:

LIABILITY AND INSURANCE (DEC 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to

the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to

appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

252.247-7008 Reserved.

252.247-7009 Reserved.

252.247-7010 Reserved.

252.247-7011 Reserved.

252.247-7012 Reserved.

252.247-7013 Reserved.

252.247-7014 Demurrage.
As prescribed in 247.271-3(c), 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(d), use the following clause:

CONTRACTOR LIABILITY FOR LOSS OR DAMAGE (DEC 1991)

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

"Article" means any shipping piece or package and its contents.

"Schedule" means the level of service for which specific types of traffic apply as described in DoD 4500.34-R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.* For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

252.247-7017 Reserved.

252.247-7018 Reserved.

252.247-7019 Reserved.

252.247-7020 Reserved.

252.247-7021 Reserved.

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 (JUN 2019)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the Transportation of Supplies by Sea clause of this solicitation.

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

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause.

(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.

(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—

(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;

(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—

"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. 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;

(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
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 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

(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; 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;

(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

(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 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.

(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.

(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—

(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.

(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)

(Revised September 13, 2019)

ARMED SERVICES BOARD OF CONTRACT APPEALS

Approved 1 May 1962
Revised 1 May 1969
Revised 1 September 1973
Revised 1 July 1979
Revised June 27, 2000
Revised 14 May 2007
Revised 9 April 2018
Revised 23 May 2019

Part 1–Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sections 7101-7109), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department or their authorized representative has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement as permitted by law. The Board shall operate under general policies established or approved by the Under Secretary of Defense responsible for acquisition and may perform other duties as directed not inconsistent with the Contract Disputes Act of 1978. The Board shall decide the matters before it independently.

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Appointment of Board members shall be made by the Secretary of Defense. Members of the Board are hereby designated Administrative Judges. There shall be designated from among the appointed Judges of the Board a Chairman and two or more Vice Chairmen. Designation of the Chairman and Vice Chairmen shall be made by the Secretary of Defense, of nominees from Judges of the Board recommended by the Under Secretary of Defense responsible for acquisition, in coordination with the General Counsel of the Department of Defense, and the Assistant Secretaries of the Military Departments

responsible for acquisition. When there is a vacancy, the incumbent is unavailable, or for appropriate Board administrative reasons, the Under Secretary of Defense responsible for acquisition or the Chairman may designate a Judge of the Board to serve as an Acting Chairman or Acting Vice Chairman.

3. The Chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. The Chairman shall have authority to establish procedures for the issuance of Board decisions. The Chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by a Senior Deciding Group established by the Chairman which shall have the authority to overturn prior Board precedent.

4. It shall be the duty and obligation of the Judges of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

5. Any Judge of the Board or any examiner, designated by the Chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument. A Judge of the Board shall have authority to administer oaths and issue subpoenas as specified in the Contract Disputes Act of 1978. In cases of contumacy or refusal to obey a subpoena, the Chairman may request orders of the court in the manner prescribed in the Contract Disputes Act of 1978.

6. The Board shall have all powers necessary and incident to the proper performance of its duties. The Board has the authority to issue methods of procedure and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions.

7. The Chairman shall be responsible for the internal organization of the Board and for its administration. The Chairman shall provide within approved ceilings for the staffing of the Board with non-Judge personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The Chairman shall appoint a Recorder of the Board. All personnel shall be responsible to and shall function under the direction, supervision and control of the Chairman.

8. The Board will be serviced by the Department of the Army for administrative support as required for its operations. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by

the Under Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. Within 30 days following the close of a fiscal year, the Chairman shall forward a report of the Board's transactions and proceedings for the preceding fiscal year to the Under Secretary of Defense responsible for acquisition, the General Counsel of the Department of Defense, and the Assistant Secretaries of the Military Departments responsible for acquisition.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is effective upon the date of the signature of the Secretary of Defense.

APPROVED:

Patrick M. Shanahan
Acting Secretary of Defense

(signed 23 May 2019)

(Revised July 21, 2014)

ARMED SERVICES BOARD OF CONTRACT APPEALS

Part 2--Rules

Approved 15 July 1963
Revised 1 May 1969
Revised 1 September 1973
Revised 30 June 1980
Revised 11 May 2011
Revised 21 July 2014

PREFACE

I. JURISDICTION FOR CONSIDERING APPEALS

The Armed Services Board of Contract Appeals (referred to herein as the Board) has jurisdiction to decide any appeal from a final decision of a contracting officer, pursuant to the Contract Disputes Act, 41 U.S.C. 7101-7109, or its Charter, 48 CFR Chap. 2, App. A, Pt. 1, relative to a contract made by the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration or any other department or agency, as permitted by law.

II. LOCATION AND ORGANIZATION OF THE BOARD

(a) The Board's address is Skyline Six, Room 703, 5109 Leesburg Pike, Falls Church, VA 22041-3208; telephone 703–681–8500 (general), 703–681–8502 (Recorder). The Board's facsimile number is 703-681-8535. The Board's Recorder's email address is *asbca.recorder@mail.mil*. The Board's website address is *http://www.asbca.mil*.

(b) The Board consists of a Chairman, two or more Vice Chairmen, and other Members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board Members are designated Administrative Judges.

(c) There are a number of divisions of the Board, established by the Chairman in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman act as members of each division. Hearings may be held by an Administrative Judge or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure (see Rules 12.2(c) and 12.3(c)), the decision of a majority of a division constitutes the decision of the Board, unless the Chairman refers the appeal to the Board's Senior Deciding Group (consisting of the Chairman, Vice Chairmen, all division heads, and the Judge who drafted the decision), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty or significant precedential importance, or that have occasioned serious dispute within the normal division decision process.

(d) The Board will to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes.

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RULES

Rule 1. Appeals

(a) *Taking an Appeal*—For appeals subject to the Contract Disputes Act, notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. The appellant (contractor) should also furnish a copy of the notice of appeal to the contracting officer. For appeals not subject to the Contract Disputes Act, the contractor should refer to the Disputes clause in its contract for the time period in which it must file a notice of appeal.

(1) Where the contractor has submitted a claim of $100,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not provided a decision within that period, or where such a contractor request has not been made and the contracting officer has not issued a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule, citing the failure of the contracting officer to issue a decision.

(2) Where the contractor has submitted a properly certified claim over $100,000 to the contracting officer or has submitted a claim that involves no monetary amount, and the contracting officer, within 60 days of receipt of the claim, fails to issue a decision or fails to provide the contractor with a reasonable date by which a decision will be issued, and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule, citing the failure of the contracting officer to issue a decision.

(3) A reasonable time shall be determined by taking into account such factors as the size and complexity of the claim and the adequacy of the information provided by the contractor to support the claim.

(4) Where an appeal is before the Board pursuant to paragraph (a)(1) or (a)(2) of this Rule, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(5) In lieu of filing a notice of appeal under paragraph (a)(1) or (a)(2) of this Rule, the contractor may petition the Board to direct the contracting officer to issue a decision in a specified period of time as determined by the Board.

(b) *Contents of Notice of Appeal*—A notice of appeal shall indicate that an appeal is being taken and should identify the contract by number, the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if any. A copy of the contracting officer's final decision, if any, should be attached to the notice of appeal. The notice of appeal should be signed by the appellant or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) *Docketing of Appeal*—When a notice of appeal has been received by the Board, it will be docketed. The Board will provide a written notice of docketing to the appellant and to the Government.

Rule 2. Filing Documents

(a) Documents may be filed with the Board by the following methods:

(1) *Governmental Postal Service*—Documents may be filed via a governmental postal service. Filing occurs when the document, properly addressed and with sufficient postage, is transferred into the custody of the postal service. Contact the Recorder before submitting classified documents.

(2) *Courier*—Documents may be filed via courier. Filing occurs when the document is delivered to the Board. Contact the Recorder before submitting classified documents.

(3) *Electronic Mail*—Documents, except appeal files submitted pursuant to Rule 4, hearing exhibits, classified documents, and documents submitted *in camera* or under a protective order, may be filed via electronic mail (email). Email attachments should be in PDF format and the attachments may not exceed 10 megabytes total. The transmittal email should include the ASBCA docket number(s), if applicable, and the name of the appellant in the "Subject:" line. Filing occurs upon receipt by the Board's email server. When a document is successfully filed via email, the document should not also be submitted by any other means, unless so directed by the Board. Submit emails to: *mailto:asbca.recorder@mail.mil*.

(4) *Facsimile Transmission*—Documents, except appeal files submitted pursuant to Rule 4, hearing exhibits, classified documents, and documents submitted *in camera* or under a protective order, may be filed via facsimile (fax) machine. Due to equipment constraints, transmissions over 10 pages should not be made absent Board permission. Filing occurs upon receipt by the Board. When a document is successfully filed via fax, the document should not also be submitted by any other means, unless so directed by the Board.

(b) *Copies to Opposing Party*—The party filing any document with the Board will send a copy to the opposing party unless the Board directs otherwise, noting on the document filed with the Board that a copy has been so furnished.

Rule 3. Service Upon Other Parties

Documents may be served personally or by mail, addressed to the party upon whom service is to be made, unless the parties have agreed to an alternate means of service. Subpoenas shall be served as provided in Rule 22.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of the Government*—Within 30 days of notice that an appeal has been filed, the Government shall transmit to the Board and the appellant an appeal file consisting of the documents the Government considers relevant to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including any claim in response to which the decision was issued.

The Government's appeal file may be supplemented at such times as are fair and reasonable and as ordered by the Board.

(b) *Duties of the Appellant*—Within 30 days after receipt of a copy of the Government's appeal file, the appellant shall transmit to the Board and the Government any documents not contained therein that the appellant considers relevant to the appeal. Appellant's appeal file may be supplemented at such times as are fair and reasonable and as ordered by the Board.

(c) *Organization of Appeal File*—Documents in the appeal file may be originals or legible copies, and shall be arranged in chronological order where practicable, tabbed with sequential numbers, and indexed to identify the contents of the file. Any document without internal page numbers shall have page numbers added. All documents must be in English or include an English translation. Documents shall be submitted in 3-ring binders, with spines not wider than 3 inches wide, with labels identifying the name of the appeal, ASBCA number and tab numbers contained in each volume, on the front and spine of each volume. Each volume shall contain an index of the documents contained in the entire Rule 4 submission.

(d) *Status of Documents in Appeal File*—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to the admissibility of a particular document reasonably in advance of hearing or, if there is no hearing, of settling the record, or in any case as ordered by the Board. If such objection is made, the Board will constructively remove the document from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 10, 11, and 13.

Rule 5. Time, Computation, and Extensions

(a) Where practicable, actions should be taken in less time than the time allowed. Where appropriate and justified, however, extensions of time will be granted. All

requests for extensions of time should be in writing and indicate that the other party was contacted to seek its concurrence.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run will not be included, but the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which event the period will run to the next business day.

Rule 6. Pleadings

(a) *Appellant*—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise, and direct statements of each of its claims. The complaint shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, if any. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Should the complaint not be timely received, the appellant's claim and notice of appeal may be deemed to set forth its complaint if, in the opinion of the Board, the issues before the Board are sufficiently defined, and the parties will be notified.

(b) *Government*—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall file with the Board an answer thereto. The answer shall admit or deny the allegations of the complaint and shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by the appellant, including any affirmative defenses. Should the answer not be timely received, the Board may enter a general denial on behalf of the Government, and the parties will be notified.

(c) *Foreign Law*—A party who intends to raise an issue concerning the law of a foreign country shall give notice in its pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 10, 11, or 13. The determination of foreign law shall be treated as a ruling on a question of law.

(d) *Further Pleadings*—The Board upon its own initiative or upon motion may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided however, that the objecting party may be granted an opportunity to meet such evidence.

Rule 7. Motions

(a) *Motions Generally*—The Board may entertain and rule upon motions and may defer ruling as appropriate. The Board will rule on motions so as to secure, to the fullest extent practicable, the informal, expeditious, and inexpensive resolution of

appeals. All motions should be filed as separate documents with an appropriate heading describing the motion. Oral argument on motions is subject to the discretion of the Board.

(b) *Jurisdictional Motions*—Any motion addressed to the jurisdiction of the Board should be promptly filed. An evidentiary hearing to address disputed jurisdictional facts will be afforded on application of either party or by order of the Board. The Board may defer its decision on the motion pending hearing on the merits. The Board may at any time and on its own initiative raise the issue of its jurisdiction, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(c) *Summary Judgment Motions*—

(1) To facilitate disposition of such a motion, the parties should adhere to the following procedures. Where the parties agree that disposition by summary judgment or partial summary judgment is appropriate, they may file a stipulation of all material facts necessary for the Board to rule on the motion. Otherwise, the moving party should file with its motion a "Statement of Undisputed Material Facts," setting forth the claimed undisputed material facts in separate, numbered paragraphs. The non-moving party should file a "Statement of Genuine Issues of Material Fact," responding to each numbered paragraph proposed, demonstrating, where appropriate, the existence of material facts in dispute and if appropriate propose additional facts. The moving party and the non-moving party should submit a memorandum of law supporting or opposing summary judgment.

(2) In deciding motions for summary judgment, the Board looks to Rule 56 of the Federal Rules of Civil Procedure for guidance. The parties should explicitly state and support by specific evidence all facts and legal arguments necessary to sustain a party's position. Each party should cite to the record and attach any additional evidence upon which it relies (*e.g.*, affidavits, declarations, excerpts from depositions, answers to interrogatories, admissions). The Board may accept a fact properly proposed and supported by one party as undisputed, unless the opposing party properly responds and establishes that it is in dispute.

(d) *Response to Motions*—A non-moving party has 30 days from receipt of a motion to file its response, unless a different period is ordered by the Board. A moving party has 30 days from receipt of a non-moving party's response to file a reply, unless a different period is ordered by the Board.

Rule 8. Discovery

(a) *General Policy and Protective Orders*—The parties are encouraged to engage in voluntary discovery procedures. Within 45 days after the pleadings have been filed, the parties must confer concerning each party's discovery needs, including the scheduling of discovery and the production of electronically stored information. Absent stipulation or a Board order, no discovery may be served prior to this conference. Any motion pertaining to a discovery dispute shall include a statement that the movant has in good faith attempted to resolve the discovery dispute without involvement of the Board. In connection with any discovery procedure, the Board may issue orders to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time, and place for discovery, and

provisions for governing the disclosure of information or documents. Any discovery under this Rule shall be subject to the provisions of Rule 16 with respect to sanctions.

(b) *Depositions—When Permitted*—Subject to paragraph (a) of this Rule, a party may take, or the Board may upon motion order the taking of, testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The Board expects the parties to make persons under their control available for deposition. The motion for an order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(1) *Depositions—Orders*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(2) *Depositions—Use as Evidence*—No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent can testify at the hearing. The deposition may be used to contradict or impeach the testimony of the deponent given at a hearing. In cases submitted on the record, the Board may receive depositions to supplement the record.

(3) *Depositions—Expenses*—Each party shall bear its own expenses associated with the taking of any deposition, absent an agreement by the parties or a Board order to the contrary.

(4) *Depositions—Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 22.

(c) *Interrogatories, Requests for Admissions, Requests for Production*—Subject to paragraph (a) of this Rule, a party may serve, or the Board may upon motion order:

(1) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service;

(2) A request for the admission of specified facts and/or of the authenticity of any documents, to be answered or objected to within 45 days after service, the factual statements and/or the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and

(3) A request for the production, inspection, and copying of any documents, electronic or otherwise, or objects, not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time.

Rule 9. Pre-Hearing or Pre-Submission Conference

The Board may, upon its own initiative, or upon the request of either party, arrange a conference or order the parties to appear before an Administrative Judge or examiner for a conference to address any issue related to the prosecution of the appeal.

Rule 10. Hearings

(a) *Where and When Held*—Hearings will be held at such times and places determined by the Board to best serve the interests of the parties and the Board.

(b) *Unexcused Absence*—The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the evidentiary record will consist solely of the evidence of record at the conclusion of the hearing, except as ordered otherwise by the Board.

(c) *Nature of Hearings*—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The parties may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. The Federal Rules of Evidence are not binding on the Board but may guide the Board's rulings. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(d) *Examination of Witnesses*—Witnesses will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath or affirmation, the Board may advise the witness that his or her testimony may be subject to any provision of law imposing penalties for knowingly making false representations in connection with claims.

(e) *Interpreters*—In appropriate cases, the Board may order that an interpreter be used. An interpreter must be qualified and must be placed under oath or affirmation to give a complete and true translation.

(f) *Transcripts*—Testimony and argument at hearings will be reported verbatim, unless the Board otherwise orders. The Board will contract for a reporter. No other recordings of the proceedings will be made.

Rule 11. Submission Without a Hearing

(a) Either party may elect to waive a hearing and to submit its case upon the record. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, declarations, depositions, admissions, answers to interrogatories, and stipulations may be employed in addition to the Rule 4 file if moved and accepted into evidence. Such submissions may be supplemented by briefs. The Board may designate, with notice to the parties, any document to be made part of the record.

(b) As appropriate, the Board may also rely on pleadings, prehearing conference memoranda, orders, briefs, stipulations and other documents contained in the Board's file.

(c) Except as the Board may otherwise order, no evidence will be received after notification by the Board that the record is closed.

(d) The weight to be given to any evidence will rest within the discretion of the Board. The Board may require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(e) The record will at all reasonable times be available for inspection by the parties at the offices of the Board.

Rule 12. Optional Small Claims (Expedited) and Accelerated Procedures

12.1 Elections to Utilize Small Claims (Expedited) and Accelerated Procedures

(a) In appeals where the amount in dispute is $50,000 or less, or in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less, the appellant may elect to have the appeal processed under a Small Claims (Expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the Accelerated procedure rather than the Small Claims (Expedited) procedure for any appeal where the amount in dispute is $50,000 or less.

(b) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an Accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the Small Claims (Expedited) procedure or the Accelerated procedure shall be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election, once made, may not be changed or withdrawn except with permission of the Board and for good cause.

(d) The 45-day conference required by Rule 8(a) does not apply to Rule 12 appeals.

12.2 Small Claims (Expedited) Procedure

(a) In appeals proceeding under the Small Claims (Expedited) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's receipt of the appellant's notice of election of the Small Claims (Expedited) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any. Any other documents required under Rule 4 shall be submitted in accordance with times specified in that Rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of the appellant's notice of election, the assigned Administrative Judge should take the following actions, if feasible, in a pre-hearing conference:

(i) Identify and simplify the issues;

(ii) Establish a simplified procedure, including discovery, appropriate to the particular appeal involved;

(iii) Determine whether either party elects a hearing, and if so, fix a time and place therefor; and

(iv) Establish an expedited schedule for the timely resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct a hearing, or if no hearing is elected, to close the record on a date that will allow the timely issuance of the decision. The Board may shorten time periods prescribed or allowed under these Rules as necessary to enable the Board to decide the appeal within the 120-day period.

(c) Written decisions by the Board in appeals processed under the Small Claims (Expedited) procedure will be short and will contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may at the conclusion of the hearing and after entertaining such oral argument as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties an authenticated copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 20.

(d) A decision under Rule 12.2 shall have no value as precedent, and in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

12.3 Accelerated Procedure

(a) In appeals proceeding under the Accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board may shorten time periods prescribed or allowed under these Rules as necessary to enable the Board to decide the appeal within the 180-day period.

(b) Within 30 days after the Board has acknowledged receipt of the appellant's notice of election, the assigned Administrative Judge should take the following actions, if feasible, in a pre-hearing conference:

(1) Identify and simplify the issues;

(2) Establish a simplified procedure, including discovery, appropriate to the particular appeal involved;

(3) Determine whether either party elects a hearing, and if so, fix a time and place therefor; and

(4) Establish an accelerated schedule for the timely resolution of the appeal.

(c) Written decisions by the Board in appeals processed under the Accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of a Vice Chairman, or by a majority among these two and the Chairman in case of disagreement.

12.4 Motions for Reconsideration in Rule 12 Appeals

Motions for reconsideration of appeals decided under either the Small Claims (Expedited) procedure or the Accelerated procedure need not be decided within the original 120-day or 180-day limit, but all such motions will be processed and decided promptly so as to be consistent with the intent of this Rule.

Rule 13. Settling the Record in Appeals with a Hearing

(a) The record upon which the Board's decision will be rendered consists of the documents admitted under Rule 4, the documents admitted into evidence as hearing exhibits, together with the hearing transcript. The Board may designate with notice to the parties, any document to be made part of the record.

(b) As appropriate, the Board may also rely on pleadings, pre-hearing conference memoranda, orders, briefs, stipulations, and other documents contained in the Board's file.

(c) Except as the Board may otherwise order, no evidence will be received after completion of an oral hearing.

(d) The weight to be given to any evidence will rest within the discretion of the Board. The Board may require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(e) The record will at all reasonable times be available for inspection by the parties at the offices of the Board.

Rule 14. Briefs

(a) *Pre-Hearing Briefs*—The Board may require the parties to submit pre-hearing briefs. If the Board does not require pre-hearing briefs, either party may, upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board.

(b) *Post-Hearing Briefs*—Post-hearing briefs may be submitted upon such terms as may be directed by the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 15. Representation

(a) An individual appellant may represent his or her interests before the Board; a corporation may be represented by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. Anyone representing an appellant shall file a written notice of appearance with the Board.

(b) The Government shall be represented by counsel. Counsel for the Government shall file a written notice of appearance with the Board.

Rule 16. Sanctions

If any party fails to obey an order issued by the Board, the Board may impose such sanctions as it considers necessary to the just and expeditious conduct of the appeal.

Rule 17. Dismissal or Default for Failure to Prosecute or Defend

Whenever the record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice for failure to prosecute. In the case of a default by the Government, the Board may issue an order to show cause why the Board should not act thereon pursuant to Rule 16. If good cause is not shown, the Board may take appropriate action.

Rule 18. Suspensions; Dismissal Without Prejudice

(a) The Board may suspend the proceedings by agreement of the parties for settlement discussions, or for good cause shown.

(b) In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may dismiss such appeals from its docket for a period of time without prejudice to their restoration. Unless either party or the Board moves to reinstate the appeal within the time period set forth in the dismissal order, or if no time period is set forth, within one year from the date of the dismissal order, the dismissal shall be deemed to be with prejudice.

Rule 19. Decisions

(a) Decisions of the Board will be made in writing and authenticated copies of the decision will be sent simultaneously to both parties. All orders and decisions, except those as may be required by law to be held confidential, will be available to the public. Decisions of the Board will be made solely upon the record.

(b) Any monetary award shall be promptly paid.

(c) In awards that may be paid from the Judgment Fund, 31 U.S.C. 1304, the Recorder will forward the required forms to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute the forms indicating that no judicial review will be sought. The Government agency will forward the required forms with a copy of the decision to the Department of the Treasury for certification of payment.

(d) When the parties settle an appeal in favor of the appellant, they may file with the Board a stipulation setting forth the amount of the settlement due to the appellant. By joint motion, the parties may request that the Board issue a decision in the nature of a consent judgment, awarding the stipulated amount to the appellant. These decisions will be processed in accordance with paragraph (c) of this Rule.

(e) After a decision has become final the Board may, upon request of a party and after notice to the other party, grant the withdrawal of original exhibits, or any part

thereof. The Board may require the substitution of true copies of exhibits or any part thereof as a condition of granting permission for such withdrawal.

Rule 20. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to grant the motion. The motion must be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion. An opposing party must file any cross-motion for reconsideration within 30 days from its receipt of the motion for reconsideration. Extensions in the period to file a motion will not be granted. Extensions to file a memorandum in support of a timely-filed motion may be granted.

Rule 21. Remand from Court

Whenever any Court remands an appeal to the Board for further proceedings, each of the parties shall, within 30 days of receipt of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the Court's remand. The Board will consider the reports and enter an order governing the remanded appeal.

Rule 22. Subpoenas

(a) *Voluntary Cooperation*—Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party without issuance of a subpoena, and

(2) To secure voluntary attendance of desired third-party witnesses and production of desired third-party books, records, documents, or tangible things whenever possible.

(b) *General*—Upon written request of either party, or on his or her own initiative, an Administrative Judge may issue a subpoena requiring:

(1) *Testimony at a deposition*—The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the Board;

(2) *Testimony at a hearing*—The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and records*—The production by the witness at the deposition or hearing of books and records (including electronically stored information and other tangible things) designated in the subpoena.

(c) *Request for Subpoena*—

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) The Board may honor a request for subpoena not made within the time limitations set forth in paragraph (c)(1) of this Rule.

(3) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and records sought. The Board may require resubmission of a request that does not provide this information.

(d) *Requests to Quash or Modify*—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may quash or modify the subpoena if it is unreasonable or oppressive or for other good cause shown, or require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy of the request has been served upon the opposing party.

(e) *Form of Subpoena*—

(1) Every subpoena shall state the name of the Board and the caption of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and records at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge will sign the subpoena, enter the name of the witness and may otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781.

(f) *Service*—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served in any state, commonwealth, territory, or the District of Columbia. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law. However, where the subpoena is issued on behalf of the Government, payment need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking such evidence as the Board deems appropriate.

(g) *Contumacy or Refusal to Obey a Subpoena*—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board may apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 23. Ex Parte Communications

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, ex parte, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This Rule does not apply to consultation among Board members or its staff or to ex parte communications concerning the Board's administrative functions or procedures.

Rule 24. Effective Date

These rules and addendums are applicable to appeals processed under the Contract Disputes Act (CDA), 41 U.S.C. 7101-7109, and other appeals to the extent consistent with law. They apply to all appeals filed on or after the date of final publication in the Federal Register, and to those appeals filed before that date, unless that application is inequitable or unfair.

ADDENDUM I

EQUAL ACCESS TO JUSTICE ACT PROCEDURES

(a) *Definitions*—

For the purpose of these procedures:

(1) "Equal Access to Justice Act," or "EAJA," means 5 U.S.C. 504, as amended;

(2) "Board" means the Armed Services Board of Contract Appeals; and

(3) "Contract Disputes Act" means the Contract Disputes Act, 41 U.S.C. 7101-7109 (CDA).

(b) *Scope of procedures*—These procedures are intended to assist the parties in the processing of EAJA applications for award of fees and other expenses incurred in connection with appeals pursuant to the CDA.

(c) *Eligibility of applicants*—

(1) To be eligible for an EAJA award, an applicant must be a party appellant that has prevailed in a CDA appeal before the Board and must be one of the following:

(i) An individual with a net worth which did not exceed $2,000,000 at the time the appeal was filed; or

(ii) Any owner of an unincorporated business, or any partnership, corporation, association, unit of local Government, or organization, the net worth of which does not exceed $7,000,000 and which does not have more than 500 employees; except:

(A) Certain charitable organizations or cooperative associations; and

(B) For the purposes of 5 U.S.C. 504(a)(4), a small entity as defined in 5 U.S.C. 601, need not comply with any net worth requirement (see 5 U.S.C. 504(b)(1)(B)).

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the underlying CDA appeal was filed with the Board.

(d) *Standards of awards*—A prevailing eligible applicant shall receive an award of fees and expenses incurred in connection with a CDA appeal, unless the position of the Government over which the applicant prevailed was substantially justified, or if special circumstances make the award unjust.

(e) *Allowable fees and other expenses*—

(1) Fees and other expenses must be reasonable. Awards will be based upon the prevailing market rates, subject to paragraph (e)(2) of this section, for the kind and quality of services furnished by attorneys, agents, and expert witnesses.

(2) No award for the fee of an attorney or agent may exceed $125 per hour. No expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved.

(3) The reasonable cost of any study, analysis, engineering report, test, or project, prepared on behalf of a party may be awarded, to the extent that the study or other matter was necessary in connection with the appeal and the charge for the service does not exceed the prevailing rate for similar services.

(f) *Time for filing of applications*—An application may be filed after an appellant has prevailed in the CDA appeal within 30 days after the Board's disposition of the appeal has become final.

(g) *Application contents*—

(1) An EAJA application shall comply with each of the following:

(i) Show that the applicant is a prevailing party;

(ii) Show that the applicant is eligible to receive an award;

(iii) Allege that the position of the government was not substantially justified; and

(iv) Show the amount of fees and other expenses sought, including an itemized statement thereof.

(2) An original and one copy of the application and exhibits should be filed with the Board. The applicant will forward one copy to the Government.

(3) When a compliant application has been timely filed, the Board, in order to obtain more detailed information, may require supplementation of the application.

(h) *Net worth exhibit*—Each applicant for which a determination of net worth is required under the EAJA should provide with its application a detailed net worth exhibit showing the net worth of the applicant when the CDA appeal was filed. The exhibit may be in any form convenient to the applicant that provides full disclosure of assets, liabilities, and net worth.

(i) *Fees and other expenses exhibit*—The application should be accompanied by a detailed fees and other expenses exhibit fully documenting the fees and other expenses, including the cost of any study, analysis, engineering report, test, or project, for which an award is sought. The date and a description of all services rendered or costs incurred should be indicated. A separate itemized statement should be submitted for each professional firm or individual whose services are covered by the application showing the hours spent in connection with the CDA appeal by each individual, a description of the particular services performed by specific date, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses sought.

(j) *Answer to application*—

(1) Within 30 days after receipt by the Government of an application, the Government may file an answer. Unless the Government requests an extension of time for filing or files a statement of intent to negotiate under paragraph (2) below, failure to file an answer within the 30-day period may be treated by the Board at its discretion as a general denial to the application on behalf of the Government.

(2) If the Government and the applicant believe that the matters raised in the application can be resolved by mutual agreement, they may jointly file a statement of intent to negotiate a settlement. Filing of this statement will extend the time for filing an answer for an additional 30 days. Further extensions may be requested by the parties.

(3) The answer will explain in detail any objections to the award requested and identify the facts relied upon in support of the Government's position.

(4) An original and one copy of the answer should be filed with the Board. The Government will forward one copy to the applicant.

(k) *Reply*—Within 15 days after receipt of an answer, the applicant may file a reply. An original and one copy of the reply will be filed with the Board. The applicant will forward one copy to the Government.

(l) *Award proceedings*—

(1) The Board may enter an order prescribing the procedure to be followed or take such other action as may be deemed appropriate under the EAJA. Further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application.

(2) A request that the Board order further proceedings under this paragraph will describe the disputed issues, explain why the additional proceedings are deemed necessary to resolve the issues and specifically identify any information sought and its relationship to the disputed issues.

(m) *Evidence*—

(1) *Decisions on the merits*—When a CDA appeal is decided on the merits, other than by a consent judgment, the record relating to whether the Government's position under the EAJA was substantially justified will be limited to the record in the CDA appeal. Evidence relevant to other issues in the award proceeding may be submitted.

(2) *Other dispositions*—When a CDA appeal is settled, or decided by a consent judgment, either party in proceedings under the EAJA may, for good cause shown, supplement the record established in the CDA appeal with affidavits and other supporting evidence relating to whether the position of the agency was substantially justified or other issues in the award proceeding.

(n) *Decision*—Decisions under the EAJA will be rendered by the Administrative Judge or a majority of the judges who would have participated in a motion for reconsideration of the underlying CDA appeal. The decision of the Board will include written findings and conclusions and the basis therefor. The Board's decision on an application for fees and other expenses under the EAJA will be the final administrative decision regarding the EAJA application.

(o) *Motions for reconsideration*—Either party may file a motion for reconsideration. Motions for reconsideration must be filed within 30 days of receipt of the Board's EAJA decision. Extensions in the period to file a motion will not be granted. Extensions to file a memorandum in support of a timely filed motion may be granted.

(p) *Payment of Awards*—The Board's EAJA awards will be paid directly by the contracting agency over which the applicant prevailed in the underlying CDA appeal.

ADDENDUM II

ALTERNATIVE METHODS OF DISPUTE RESOLUTION

1. The Contract Disputes Act (CDA), 41 U.S.C. 7105(g)(1), states that boards of contract appeals "shall ... to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes". Resolution of a dispute at the earliest stage feasible, by the fastest and least expensive method possible, benefits both parties. To that end, the parties are encouraged to consider Alternative Dispute Resolution (ADR) procedures for pre-claim and pre-final decision matters, as well as appeals pending before the Board. The Board may also conduct ADRs for any Federal agency. However, if the matter is not pending before the Board under its CDA jurisdiction, any settlement may not be paid out of the Judgment Fund.

2. The ADR methods described in this Addendum are intended to suggest techniques that have worked in the past. Any appropriate method that brings the parties together in settlement, or partial settlement, of their disputes is a good method. The ADR methods listed are not intended to preclude the parties' use of other ADR techniques that do not require the Board's participation, such as settlement negotiations, fact-finding conferences or procedures, mediation, or minitrials not involving use of the Board's personnel. Any method, or combination of methods, including one that will result in a binding decision, may be selected by the parties without regard to the dollar amount in dispute.

3. The parties must jointly request ADR procedures at the Board. The request must be approved by the Board. The Board may also schedule a conference to explore the desirability and selection of an ADR method and related procedures. If an ADR involving the Board's participation is requested and approved by the Board, a Neutral will be appointed. If an Administrative Judge has already been assigned to an appeal, the same judge will normally be assigned to be the Neutral in an ADR. If an Administrative Judge has not yet been assigned to the appeal, or if the subject of the ADR is a matter pending before the contracting officer prior to any appeal, the Board will appoint an Administrative Judge to be the Neutral. In such instances, as well as situations in which the parties prefer that an assigned Administrative Judge not be appointed to serve as the Neutral, the parties may submit a list of at least three preferred Administrative Judges and the Board will endeavor to accommodate their preferences.

4. To facilitate full, frank and open discussion and presentations, any Neutral who has participated in a non-binding ADR procedure that has failed to resolve the underlying dispute will be recused from further participation in the matter unless the parties expressly agree otherwise in writing and the Board concurs. Further, the recused Neutral will not discuss the merits of the dispute or substantive matters involved in the ADR proceedings with other Board personnel.

5. Written material prepared specifically for use in an ADR proceeding, oral presentations made at an ADR proceeding, and all discussions in connection with such proceedings between the parties and the Neutral are confidential and, unless otherwise specifically agreed by the parties, inadmissible as evidence in any pending or future Board proceeding involving the parties or matter in dispute. However, evidence otherwise admissible before the Board is not rendered inadmissible because of its use in the ADR proceeding.

6. The ADR method and the procedures and requirements implementing the ADR method will be prescribed by the written agreement of the parties and approved by the Board. ADR methods can be used successfully at any stage of the litigation.

7. The following are examples of ADR methods commonly used at the Board:

(a) *Nonbinding*—

Mediations: A Neutral is an Administrative Judge who will not normally hear or have any formal or informal decision-making authority in the matter and who is appointed for the purpose of facilitating settlement. In many circumstances, settlement can be fostered by a frank, in-depth discussion of the strengths and weaknesses of each party's position with the Neutral. The agenda for meetings with

the Neutral will be flexible to accommodate the requirements of the case. To further the settlement effort, the Neutral may meet with the parties either jointly or individually. A Neutral's recommendations are not binding on the parties. When this method is selected, the ADR agreement must contain a provision in which the parties and counsel agree not to subpoena the Neutral in any legal action or administrative proceeding of any kind to produce any notes or documents related to the ADR proceeding or to testify concerning any such notes or documents or concerning his/her thoughts or impressions.

(b) *Binding—*

Summary Proceeding With Binding Decision: A summary proceeding with binding decision is a procedure whereby the resolution of the appeal is expedited and the parties try their appeal informally before an Administrative Judge. A binding "bench" decision may be issued upon conclusion of the proceeding, or a binding summary written decision will be issued by the judge no later than ten days following the later of conclusion of the proceeding or receipt of a transcript. The parties must agree in the ADR agreement that all decisions, rulings, and orders by the Board under this method shall be final, conclusive, not appealable, and may not be set aside, except for fraud. All such decisions, rulings, and orders will have no precedential value. Pre-hearing, hearing, and post-hearing procedures and rules applicable to appeals generally will be modified or eliminated to expedite resolution of the appeal.

(c) *Other Agreed Methods—*

The parties and the Board may agree upon other informal methods, binding or nonbinding that are structured and tailored to suit the requirements of the individual case.

8. The above-listed ADR procedures are intended to shorten and simplify the Board's more formalized procedures. Generally, if the parties resolve their dispute by agreement, they benefit in terms of cost and time savings and maintenance or restoration of amicable relations. The Board will not view the parties' participation in ADR proceedings as a sign of weakness. Any method adopted for dispute resolution depends upon both parties having a firm, good faith commitment to resolve their differences. Absent such intention, the best structured dispute resolution procedure is unlikely to be successful.

APPENDIX F: MATERIAL INSPECTION AND RECEIVING REPORT

(Revised September 13, 2019)

PART 1—INTRODUCTION

F-101 General.

(a) This appendix contains procedures and instructions for the use, preparation, and distribution of the Wide Area WorkFlow (WAWF) Receiving Report (RR), WAWF Reparable Receiving Report (WAWF RRR), the WAWF Energy RR, and commercial shipping/packing lists used to document Government contract quality assurance. The WAWF RR is the electronic equivalent of the DD Form 250, Material Inspection and Receiving Report (MIRR). The WAWF Energy RR is the electronic equivalent of the DD Form 250 for overland shipments and DD Form 250-1, Tanker/Barge Material Inspection and Receiving Report, for waterborne shipments. The WAWF RRR is the electronic equivalent of the DD Form 250 for repair, maintenance, or overhaul of Government-furnished property.

(b) The use of the DD Form 250 series documents is on an exception basis (see DFARS 232.7002(a)) because use of the WAWF RR is now required by most DoD contracts. WAWF provides for electronic preparation and documentation of acceptance of supplies and services, and electronic invoicing. In addition WAWF allows the printing of a RR that can be used as a packing list or when a signed copy is required.

F-102 Applicability.

(a) DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, requires payment requests and receiving reports using WAWF in nearly all cases.

(b) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

F-103 Use.

(a) The WAWF RR, WAWF RRR, and the DD Form 250 are multipurpose reports used—

(1) To provide evidence of Government contract quality assurance at origin or destination;

(2) To provide evidence of acceptance at origin, destination, or other;

(3) For packing lists;

(4) For receiving;

(5) For shipping;

(6) As a contractor invoice (the WAWF RR, WAWF RRR, or DD Form 250 alone cannot be used as an invoice, however the option exists to create an invoice from the Receiving Report or a Combo (Invoice and Receiving Report) both of which minimize data entry); and

(7) As commercial invoice support.

(b) Do not use the WAWF RR, WAWF RRR, or the DD Form 250 for shipments—

(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory. The WAWF Property Transfer document should be used for this type of shipment. Training for the preparation of this document type is available at https://wawftraining.eb.mil, under the Property Transfer and Receipt section.

(c) The contractor prepares the WAWF RR, WAWF RRR, or the DD Form 250, except for entries that an authorized Government representative is required to complete. When using a paper DD Form 250, the contractor shall furnish sufficient copies of the completed form, as directed by the Government representative.

(d) Use the WAWF Energy RR or the DD Form 250-1:

(1) For bulk movements of petroleum products by tanker or barge to cover—

(i) Origin or destination acceptance of cargo; or

(ii) Shipment or receipt of Government owned products.

(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words "INSPECTED FOR QUALITY ONLY."

(e) In addition to the above uses, the WAWF RR and WAWF RRR provide additional functionality, not provided by the paper DD Form 250 that complies with the following requirements:

(1) Item Unique Identification (IUID), when the clause at DFARS 252.211-7003, Item Unique Identification and Valuation is used in the contract, reporting of IUID data is required. WAWF captures the IUID data and forwards the data to the IUID registry after acceptance. WAWF shall be used to report Unique Item Identifiers (UIIs) at the line item level, unless an exception to WAWF applies, and can also be used to report UIIs embedded at the line item level.

(2) Radio Frequency Identification (RFID), when the clause at DFARS 252.211-7006, Radio Frequency Identification, is used in the contract, WAWF will capture the RFID information and forward the data to the receiving location. Using WAWF is the only way a contractor can comply with the clause to furnish RFID data via an Advance

Shipping Notice (ASN). The RFID information may be added at time of submission, or via the WAWF Pack Later functionality after acceptance.

(3) Reporting of Government-furnished property, when the clause at DFARS 252.211-7007, Reporting of Government-Furnished Property, is used in the contract, use of the WAWF RRR will capture the shipment of Government-furnished property items after acceptance of repair services and forward the data to the IUID registry. WAWF is the only way a contractor can report the transfer of Government-furnished property items in the IUID registry.

F-104 Application.

(a) *WAWF RR and DD Form 250.*

(1) Use the WAWF RR or DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the WAWF RR or DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one WAWF RR or DD Form 250 to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate WAWF RR or DD Form 250 for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one Federal supply class (FSC) or material management code (MMC), prepare a separate WAWF RR or DD Form 250 for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single WAWF RR or DD Form 250, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) *Consolidation of Petroleum Shipments on a Single WAWF RR or DD Form 250.*

(i) *Contiguous United States*. Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one WAWF RR or DD Form 250. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or Government) with each individual load showing as a minimum—

(A) The shipper;

(B) Shipping point;

(C) Consignee;

(D) Contract and line item number;

(E) Product identification;

(F) Gross gallons (bulk only);

(G) Loading temperature (bulk only);

(H) American Petroleum Institute gravity (bulk only);

(I) Identification of carrier's equipment;

(J) Serial number of all seals applied; and

(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference F-401, Table 1) before signing Block 21b.

(ii) *Overseas*. The same criteria as for contiguous United States applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each WAWF RR or DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) *Consolidation of Coal Shipments on a Single WAWF RR or DD 250.* Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one WAWF RR or DD 250. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;

(ii) The name or names;

(iii) Location and shipping point of the mine or mines from which the coal originates;

(iv) The contract number;

(v) The exact size of the coal shipped; and

(vi) A certified weighmaster's certification of weight for the truckload.

Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) *WAWF RRR or DD Form 250.* Use as in paragraph (a) of this section for delivery of services for repair, overhaul, or maintenance.

(c) *WAWF Energy RR or the DD Form 250-1.*

(1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

PART 2—CONTRACT QUALITY ASSURANCE ON SHIPMENTS BETWEEN CONTRACTORS

F-201 Procedures.
Follow the procedures at PGI F-201 for evidence of required Government contract quality assurance at a subcontractor's facility.

PART 3—PREPARATION OF THE WIDE AREA WORKFLOW (WAWF) RECEIVING REPORT (RR), WAWF REPARABLE RECEIVING REPORT (WAWF RRR), AND WAWF ENERGY RR

F-301 Preparation instructions.

(a) *General.*

(1) Preparation instructions and training for the WAWF RR are available at https://wawftraining.eb.mil. The instructions on preparing a WAWF RR are part of the Vendor Training section.

(2) Prime contractors can direct subcontractors to prepare and submit documents in WAWF by giving their subcontractors access to WAWF via the creation of a Commercial and Government Entity (CAGE) extension to the prime CAGE.

(3) If the contract is in Electronic Data Access (EDA) (DoD's contract repository), then the WAWF system will automatically populate all available and applicable contract data.

(i) When source acceptance is required, WAWF will populate the "Inspect By" with the "Admin by" Department of Defense Activity Address Code (DoDAAC). The vendor shall change the DoDAAC if Government Source Inspection (GSI) is performed at other than the "Admin By."

(ii) Any fields that have been pre-filled may be changed.

(iii) WAWF will also verify that CAGE codes are valid and active in the System for Award Management (SAM), and that DoDAACs and Military Assistance Program Address Codes (MAPACs) are valid in Defense Automatic Addressing System (DAAS).

(4) WAWF will populate the address information for CAGE codes, DODAACs, and MAPACs from SAM and DAAS. These sites are the DoD definitive sources for address information. Any fields that have been pre-filled may be changed or additional information added.

(5) Do not include classified information in WAWF.

(b) *Completion instructions.*

(1) CONTRACT NO/DELIVERY ORDER NO.

(i) For stand-alone contracts, enter the 13-position alpha-numeric basic Procurement Instrument Identifier (PIID) of the contract. For task and delivery orders numbered in accordance with FAR 4.1603 and DFARS 204.1603, enter the 13-character order number. The contract or agreement number under which the order was placed may be omitted from the WAWF RR. Alternatively, the contractor may choose to enter the contract number on the WAWF RR in addition to the 13-character order number. If the order has only a four-position alpha-numeric call or order serial number, enter both the 13-position basic contract PIID and the four-position order number.

(ii) Except as indicated in paragraph (b)(1)(iii) of this appendix, do not enter supplementary numbers used in conjunction with basic PIIDs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls or orders; or

(C) Document numbers representing contracts written between contractors.

(iii) When shipping instructions are furnished and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation/Modification of Contract), enter a comment in the Misc. Info Tab to this effect. This will appear in the Comments section of the printed WAWF RR.

(2) SHIPMENT NO.

(i) The shipment number format requires first three data positions to be alpha, fourth position alpha-numeric and last three positions numeric, e.g., DFAR001 or DAR0001. Any document used as a packing list must include the shipment number information.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each "Shipped From" address. The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one "Shipped From" address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number from each "Shipped From" address, or shipping location within the "Shipped From" address. Consecutively number all subsequent shipments with the identical shipment number prefix. While shipments should be created sequentially they can be released and accepted out of sequence.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three-position numeric serial number. Use the following alpha-numeric sequence:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, the shipment number prefix will have to be changed when the series is completely used. WAWF will not allow duplicate shipment numbers to be created against a contract or contract and delivery order.

(ii) Reassign the shipment number of the initial shipment where a "Replacement Shipment" is involved (see paragraph (b)(16)(iv)(F) of this appendix).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a "Z." Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to end that shipment number with a "Z"; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see F-304) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(iv) Contractors follow the procedures in F-305 to use commercial invoices.

(3) DATE SHIPPED. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of contract quality assurance and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" or select an "E" from the drop down menu in the "Estimated" block after the date. Do not delay submission of the WAWF RR for lack of entry of the actual shipping date. Correction of the WAWF RR is not required to show the actual shipping date (see F-303). Once the document is submitted the shipment date cannot be changed.

(4) B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L;" WAWF provides the capability to separately and correctly identify the Government Bill of Lading (GBL) from a Commercial Bill of Lading (CBL). An authorized user will select whether the entered bill of lading number is either a GBL number or a CBL number.

(ii) The transportation control number must be a 17 alpha/numeric digit min/max field, and WAWF provides the capability to enter two secondary transportation tracking numbers.

(5) LINE HAUL MODE. Select the Line Haul Mode of Shipment code from a drop down menu in WAWF.

(6) INSPECTION AND ACCEPTANCE POINT. Enter an "S" for Origin or "D" for Destination. In addition to "S" and "D," WAWF allows acceptance at Other (O). For purposes of conforming to contract, "O" is equivalent to "D". In WAWF, destination acceptance is performed by the "Ship to" DODAAC organization and "Other" permits the acceptance of destination documents at a location other than the "Ship to." The goods or services will be shipped to one location and the paperwork will be routed to another location for the actual acceptance.

(7) PRIME CONTRACTOR/CODE. Enter the prime CAGE code to which the contract was awarded.

(8) ADMINISTERED BY/CODE. Enter the DoDAAC code of the contract administration office cited in the contract.

(9) SHIPPED FROM/CODE

(i) Enter the CAGE or DoDAAC code of the "Shipped From" location. If it is the same as the CAGE code leave blank.

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code of the location at which the services were performed. As mentioned in (i) above, if identical to the prime CAGE code leave blank.

(10) FOB. Enter an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(11) PAYMENT WILL BE MADE BY/CODE. Enter the DoDAAC code of the payment office cited in the contract.

(12) SHIPPED TO/CODE. Enter the DoDAAC, MAPAC, or CAGE code from the contract or shipping instructions.

(13) MARKED FOR/CODE. Enter the code from the contract or shipping instructions. Only valid DoDAACs, MAPACs, or CAGE codes can be entered. Vendors should use the WAWF "Mark for Rep" and "Mark for Secondary" fields for textual marking information specified in the contract. Enter the three-character project code when provided in the contract or shipping instructions.

(14) ITEM NO. Enter the item number used in the contract. Use a valid 4 or 6 character line item number under the Uniform Contract Line Item Numbering System (see 204.71). Line item numbers with 6 characters with numbers in the final two positions are not deliverable or billable.

(15) STOCK/PART NUMBER/DESCRIPTION.

(i) Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. If the contract contains NSNs as well as other identification (e.g. part numbers) the contractor should place the NSN information in the Stock Part Number field and the remaining numbers in the line item description field. The data entered in the NSN field must reflect the NSN of the material item being shipped and should be a valid NSN, 13 positions in length. In the "Type" drop-down field, select the corresponding type for the data entered. If no National Stock Number (NSN) or other valid "Type" is available, the word "NONE" may be entered for the Stock/Part Number, with a corresponding "Type" of any value other than NSN selected from the drop-down box.

(B) In the description field, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) The Military Standard Requisitioning and Issue Procedures (MILSTRIP) must be placed on the MILSTRIP Tab, not in the line item description field. Enter the MILSTRIP data for each CLIN when MILSTRIP data is identified in the contract.

(ii) For service line items, select SV for "SERVICE" in the type field followed by as short a description as is possible in the description field. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing.

(A) For WAWF RRRs, the "Ship To" code is the DoDAAC, MAPAC, or CAGE code from the contract or shipping instructions.

(B) For service line items not using a WAWF RRR, the "Ship To" code and the "Unit" shall be filled out. The "Ship To" code is the destination Service Acceptor Code for WAWF. If source inspected and accepted, enter the service performance location as the "Ship To" code.

(iii) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter the gross weight of the shipment.

(iv) In the description field enter the following as appropriate (entries may be extended through Block 20).

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911-14003-104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., "AERNO 60-6354."

(G) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s):
NSN or comparable identification _____,
Quantity _____, Estimated Value _____,
Authority _____"

(H) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortages on shipment
number _____, date shipped _____"

(I) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to_____, Quantity _____,
Item _____, Ownership (Government/contractor)."

(J) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(K) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(L) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"Note: Acceptance and payment are contingent
upon receipt of approved test/evaluation results."

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(M) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(N) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP
No. _____, Contract Modification
No. _____, dated _____

(16) QUANTITY SHIPPED/RECEIVED.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity in the description field.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall choose the Ship Advice Code "Z". Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect to direct the subcontractor making the final shipment to choose the Ship Advice Code "Z";

(iii) When the Government is performing destination acceptance the acceptor should enter actual quantity received in apparent good condition in the "Qty. Accepted" field of the Acceptor Line Item Tab.

(17) UNIT OF MEASURE. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure in the description field. Authorized abbreviations are listed in MIL-STD-129, Marking for Shipping and Storage and in the WAWF Unit of Measure Table Link. For example, LB for pound, SH for sheet.

(18) UNIT PRICE. When using the WAWF RRR, the unit price is the price of the repair, overhaul, or maintenance service from the contract.

(i) The contractor may, at its option, enter unit prices on the WAWF RR, except when the contract has IUID requirements and the receiving report is being processed in WAWF, the unit price must represent the acquisition cost that will be recorded in the IUID registry. Therefore, in such cases, the unit price is required. See DFARS 252.211-7003, Item Unique Identification and Valuation.

(ii) The Contractor shall enter unit prices for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items cost the Government. When the price is estimated, enter "Estimated Unit Price" in the description field. When delivering GFP via WAWF to another contractor, WAWF will initiate a property transfer if the vendor who is initiating the WAWF RR is also registered as a vendor property shipper in WAWF and the vendor receiving the property is also a vendor property receiver in WAWF.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value as "GFP UNIT VALUE" in the description field.

(iv) For all copies of DD Forms 250 for FMS shipments, enter actual prices, if available. If actual prices are not available, use estimated prices. When the price is estimated, enter an "E" after the price.

(19) AMOUNT. WAWF will calculate and populate the amount by multiplying the unit price times the quantity.

(20) CONTRACT QUALITY ASSURANCE (CQA).

(i) The words "conform to contract" contained in the text above the signature block in the WAWF RR Header Tab relate to quality and to the quantity of the items on the report. Enter notes taking exception in Misc. Info Tab comment field or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under an alternative release procedure, contractors will execute the alternative release procedure in WAWF by including the appropriate indicator in the electronic transaction rather than through inclusion or attachment of the text of the certificate. The alternative release procedure only provides for release of shipment; Government acceptance must still be indicated by a Government official's signature on the WAWF RR.

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, contractors will execute Certificates in WAWF by including the appropriate indicator in the electronic transaction rather than through inclusion or attachment of the text of the certificate. Government acceptance must still be indicated by a Government official's signature on the WAWF RR.

(iv) *ORIGIN.*

(A) The authorized Government representative must:—

(1) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance; and

(2) Sign and date.

WAWF will enter the typed, stamped, or printed name, title, email address, and commercial telephone number.

(B) When fast pay procedures apply, the contractor or subcontractor shall select "FAST PAY" when creating the WAWF RR. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(v) *DESTINATION.* When CQA and acceptance or acceptance is at destination, the authorized Government representative must—

(A) Place an "X" in the appropriate box(es); and

(B) Sign and date.

WAWF will enter the typed, stamped, or printed name, title, email address, and commercial telephone number.

(21) CONTRACTOR USE ONLY. MISC. INFO. Self explanatory.

F-302 Mode/method of shipment codes.

CODE	DESCRIPTION
A	Motor, truckload
B	Motor, less than truckload
C	Van (unpacked, uncrated personal or Government property)
D	Driveaway, truckaway, towaway
E	Bus
F	Air Mobility Command (Channel and Special Assignment Airlift Mission)
G	Surface parcel post
H	Air parcel post
I	Government trucks, for shipment outside local delivery area
J	Air, small package carrier
K	Rail, carload 1/
L	Rail, less than carload 1/
M	Surface, freight forwarder
N	LOGAIR
O	Organic military air (including aircraft of foreign governments)
P	Through Government Bill of Lading (TGBL)
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis)
R	European Distribution System or Pacific Distribution System
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service)
T	Air freight forwarder
U	QUICKTRANS
V	SEAVAN

W	Water, river, lake, coastal (commercial)
X	Bearer, walk-thru (customer pickup of material)
Y	Military Intratheater Airlift Service
Z	Military Sealift Command (MSC) (controlled contract or arranged space)
2	Government watercraft, barge, lighter
3	Roll-on Roll-off (RORO) service
4	Armed Forces Courier Service (ARFCOS)
5	Surface, small package carrier
6	Military official mail (MOM)
7	Express mail
8	Pipeline
9	Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

1/Includes trailer/container-on-flat-car (excluding SEAVAN).

F-303 Consolidated shipments.
When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the WAWF RR or WAWF RRR at the time of CQA or acceptance prior to the time of actual shipment.

F-304 Correction instructions.
Functionality for correcting a WAWF RR or WAWF RRR is available for Defense Contract Management Agency administered contracts paid using the Mechanization of Contract Administration Services system with source acceptance. Preparation instructions and training for corrections is available at https://wawftraining.eb.mil. The instructions are part of the Vendor Training section.

F-305 Invoice instructions.
Contractors shall submit payment requests and receiving reports in accordance with paragraph (b) of the clause at DFARS 252.232-7003 unless one of the exceptions in paragraph (d) of that clause applies.

F-306 Packing list instructions.

(a) Contractors may use a WAWF processed RR or the WAWF RRR, as a packing list. WAWF provides an option to print the RR or RRR. Contractors can print a RR or RRR from a system other than WAWF if a signed copy is required. In such cases, the contractor shall print the WAWF RR or RRR only after a signature is applied by the Government inspector or authorized acceptor in WAWF. Copies printed from the contractor's system shall be annotated with "\\original signed in WAWF\\" in lieu of the inspector or acceptor's signature. Ensure a copy is visible on the outside and one is placed inside the package.

(b) If the contract requires Government source inspection and acceptance at origin, the contractor shall ensure that its packaging documentation includes a RR or RRR that documents inspection, acceptance, or both by the Government inspector or authorized acceptor. A paper DD Form 250 may be used in lieu of WAWF generated RRs or RRRs when one of the exceptions in paragraph (d) of the clause at DFARS 252.232-7003 applies.

F-307 Receiving instructions.
If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see F-301(b)(20)(v) for instructions.

PART 4—PREPARATION OF THE DD FORM 250 AND DD FORM 250C

F-401 Preparation instructions.

(a) *General.*

(1) Dates must use nine spaces consisting of the four digits of the year, three-position alphabetic month abbreviation, and two digits for the day. For example, 2000AUG07, 2000SEP24.

(2) Addresses must consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word "Code" in Blocks 9 through 12 and in Block 14—

(i) The Commercial and Government Entity Handbook (H4/H8) code;

(ii) The DoD activity address code (DoDAAC) as it appears in the DoD Activity Address Directory (DoDAAD), DoD 4000.25-6-M; or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DoDAAC, CAGE (H4/H8), or MAPAD code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(6) Enter overflow data from the DD Form 250 in Block 16 or in the body of the DD Form 250c with an appropriate cross-reference. Do not number or distribute

additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs must not be classified.

(b) *Completion instructions.*

(1) Block 1--PROCUREMENT INSTRUMENT IDENTIFICATION (CONTRACT) NO. See paragraph F-301(b)(1).

(2) Block 2--SHIPMENT NO. See F-301(b)(2), SHIPMENT NO. When the series is completely used, change the shipment number prefix and start with 0001.

(3) Block 3--DATE SHIPPED. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date (see F-403).

(4) Block 4--B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L;"

(ii) The transportation control number after "TCN" (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert "See Block 16"); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F-402).

(5) Block 5--DISCOUNT TERMS.

(i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in F-406 when the MIRR is used as an invoice.

(6) Block 6--INVOICE NO./DATE.

(i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in F-406 when the MIRR is used as an invoice.

(7) Block 7--PAGE/OF. Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8--ACCEPTANCE POINT. Enter an "S" for Origin or "D" for destination.

(9) Block 9--PRIME CONTRACTOR/CODE. Enter the code and address.

(10) Block 10--ADMINISTERED BY/CODE. Enter the code and address of the contract administration office cited in the contract.

(11) Block 11--SHIPPED FROM/CODE/FOB.

(i) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(iii) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12--PAYMENT WILL BE MADE BY/CODE. Enter the code and address of the payment office cited in the contract.

(13) Block 13--SHIPPED TO/CODE. Enter the code and address from the contract or shipping instructions.

(14) Block 14--MARKED FOR/CODE. Enter the code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the Code block.

(15) Block 15--ITEM NO. See paragraph F301(b)(14) with the exception to F301(b)(2)(B)2 that line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16--STOCK/PART NO./DESCRIPTION.

(i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal supply code (as published in Cataloging Handbook H4-1), and the part

number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(1) The MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract; or

(2) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:
V04696-185-750XY19059A — EA 5
N0018801776038XY3211BA — EA 200
AT650803050051AAT6391J — EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by "TCN."

(ii) For service line items, enter the word "SERVICE" followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13, and 14 when there is no shipment of material.

(iii) For all contracts administered by the Defense Contract Management Agency, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. _____
State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911-14003-104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See F-401, Block 17, for replacement indicators.)

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., "AERNO 60-6354."

(H) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s):
NSN or comparable identification _____,
Quantity _____, Estimated Value _____,
Authority _____"

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortages on shipment
number _____, date shipped _____"

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to_____, Quantity _____,
Item _____, Ownership (Government/contractor)."

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results."

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP
No. _____, Contract Modification
No. _____, dated _____

(17) Block 17--QUANTITY SHIPPED/RECEIVED.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a "Z" below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see F-405) coving the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. Do not use the "Z" on deliveries which equal or exceed the contract line item quantity.

(iii) For replacement shipments, enter "A" below the last digit of the quantity, to designate first replacement, "B" for second replacement, etc. Do not use the final shipment indicator "Z" on underrun deliveries when a final line item shipment is replaced.

17. QUANTITY SHIP/REC'D
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18--UNIT. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18. UNIT
LB
(SH)

(19) Block 19--UNIT PRICE. The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:

(i) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

(ii) Use the procedures in F-406 when the MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual price are not available, use estimated prices. When the price is estimated, enter an "E" after the price.

(20) Block 20--AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21--CONTRACT QUALITY ASSURANCE (CQA).

(i) The words "conform to contract" contained in the printed statements in Blocks 21a and 21b relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross-reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Agency.

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter in capital letters "CERTIFICATE OF CONFORMANCE" in Block 21a on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Manage Agency. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) *ORIGIN.*

(A) The authorized Government representative must—

(1) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 16;

(2) Sign and date;

(3) Enter the typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed CQA/acceptance statement.

(2) When acceptance is at origin and contract administration is performed by an office other than the Defense Contract Management Agency, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by the Defense Contract Management Agency, furnish the contract

administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F-501, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall enter in capital letters "CERTIFICATE OF CONFORMANCE" as required by paragraph (b)(21)(iii) of this appendix.

(1) For contracts administered by an office other than the Defense Contract Management Agency, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by the Defense Contract Management Agency, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F-401, Table 1).

(3) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

(v) *DESTINATION.*

(A) When acceptance at origin is indicated in Block 21a, make no entries in Block 21b.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative must—

(1) Place an "X" in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(C) When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21a and acceptance is at destination, the authorized Government representative must complete the entries required by paragraph (b)(21)(v)(B) of this appendix.

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within four work days (five days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 to the contract administration office cited in Block 10 for implementing contract closeout procedures.

(E) When "FAST PAY" is entered in Block 21a, make no entries in this block.

(22) Block 22--RECEIVER'S USE. The authorized representative of the receiving activity (Government or contractor) must use this block to show receipt, quantity, and condition. The authorized representative must--

(i) Enter the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block;

(ii) Sign; and

(iii) Enter typed, stamped, or printed name, title, mailing address, and commercial telephone number.

(23) Block 23--CONTRACTOR USE ONLY. Self explanatory.

F-402 Mode/method of shipment codes. See paragraph F302.

F-403 Consolidated shipments.
When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

F-404 Multiple consignee instructions.
The contractor may prepare one MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this appendix with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14--Enter "See Attached Distribution List."

(b) Block 15--The contractor may group item numbers for identical stock/part number and description.

(c) Block 17--Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by "MIPR," or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete MIRR for all other distribution.

F-405 Correction instructions.
Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use data identical to that of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows--

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block. For example—

2. SHIPMENT NO.	17. QUANTITY SHIP/REC'D
(AAA0001) See Block 16	19 (17)

16. STOCK/PART NO. DESCRIPTION

CORRECTIONS:

Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.

Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17), enter the words "CORRECTIONS HAVE BEEN VERIFIED" on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words "CORRECTED COPY." Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words "CORRECTED COPY."

(d) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

F-406 Invoice instructions.

(a) Contractors shall submit payment requests and receiving reports in electronic form, unless an exception in DFARS 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the WAWF electronic form (see paragraph (b) of the clause at DFARS 252.232-7003) fulfills the requirement for an MIRR.

(b) If the contracting officer authorizes the contractor to submit an invoice in paper form, the Government encourages, but does not require, the contractor to use the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare the MIRR and forward the required number of copies to the payment office as follows:

(1) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(2) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE," for all invoice submissions; and three copies: "INVOICE COPY," when the payment office requires four copies. Questions regarding the appropriate number of copies (i.e., one or four) should be directed to the applicable payment office.

(3) Forward the appropriate number of copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(4) Separate the copies of the MIRR used as an invoice from the copies of the MIRR used as a receiving report.

F-407 Packing list instructions.
Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see F-501). Mark them "PACKING LIST."

F-408 Receiving instructions.
When the MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see F-401(b)(21)(v) for instructions.

PART 5—DISTRIBUTION OF WIDE AREA WORKFLOW RECEIVING REPORT (WAWF RR), DD FORM 250 AND DD FORM 250C

F-501 Distribution of WAWF RR.
Use of the WAWF electronic form satisfies the distribution requirements of this appendix, except for the copies required to accompany shipment.

F- 502 Distribution of DD FORM 250 AND DD FORM 250C.

(a) The contractor is responsible for distributing the DD Form 250, Material Inspection and Receiving Report (MIRR) including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21a) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 1

STANDARD DISTRIBUTION

	Number of Copies
With Shipment*..	2
Consignee (via mail).	1
(For Navy procurement, include unit price)	
(For foreign military sales, consignee copies are not required)	
Contract Administration Office (CAO)..	1

(Forward direct to address in Block 10 except when addressee is a Defense Contract Management Agency (DCMA) office and a certificate of conformance or the alternative release procedures (see F-301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)

Purchasing Office. 1

Payment Office**. 2

(Forward direct to address in Block 12 except—

(i) When address in Block 10 is a DCMA office and payment office in Block 12 is the Defense Finance and Accounting Service, Columbus Center, do not make distribution to the Block 12 addressee;

(ii) When address in Block 12 is the Defense Finance and Accounting Service, Columbus Center/Albuquerque Office (DFAS-CO/ALQ), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;

(iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and

(iv) When a certificate of conformance or the alternative release procedures (see F-301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.)

ADP Point for CAO (applicable to Air Force only). 1

(When DFAS-CO/ALQ is the payment office in Block 12, send one copy to DFAS-CO/ALQ immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DFAS-CO/ALQ.)

CAO of Contractor Receiving GFP 1

(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59-H).)

* Attach as follows:

TYPE OF SHIPMENT	LOCATION
Carload or truckload	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload	Affix to container number one or container truckload bearing lowest number.
Mail, including parcel post	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements	Forward with consignee copies.

** Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office.

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 2

SPECIAL DISTRIBUTION

AS REQUIRED	ADDRESS	NUMBER OF COPIES
Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager	Address specified in contract	1 Each addressee
Quality Assurance Representative	Address specified by the assigned quality assurance representative	1
Transportation Office issuing GBL (attach to GBL memorandum copy)	CAO address unless otherwise specified in the contract	1
Purchasing Office other than office issuing contract	Address specified in the contract	1
Foreign Military Sales Representative	Address specified in the contract	8
Military Assistance Advisory Group(Grant Aid shipments)	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract	1
Army Foreign Military Sales	Commander U.S. Army Security Assistance Command ATTN: AMSAC-OL 54 "M" Avenue, Suite 1 New Cumberland, PA 17070-5096	1
Air Force On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	HQ Air Force Materiel Command LGX-AVDO Area A, Building 262, Room N142 4375 Chidlaw Road Wright-Patterson AFB, OH 45433-5006	1
When above items are delivered to aircraft modification centers.	DCMA	1

Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada	National Defence Headquarters Ottawa, Ontario Canada, K1A OK4 ATTN: DPSUPS3	1
Other than Canada	Address in the contract	1
When consignee is an Air National Guard Activity	Consignee address (Block 13) ATTN: Property Officer	3
Navy		
Navy Foreign Military Sales	Naval Inventory Control Point Deputy Commander for International Programs (NAVICP Code P761) 700 Robbins Avenue Philadelphia, PA 19111-5095	2
When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor's plant for a Government representative or when Block 16 indicates shipment includes GFP	Naval Inventory Control Point (Code 0142) for aviation type material 700 Robbins Avenue Philadelphia, PA 19111-5098 and Naval Inventory Control Point (Code 0143) for all other material 5450 Carlisle Pike PO Box 2020 Mechanicsburg, PA 17055-0788	2 2
Bulk Petroleum Shipments	Cognizant Defense Fuel Region (see Table 4)	1

PART 6—PREPARATION OF THE DD FORM 250-1 (LOADING REPORT)

F-601 Instructions.
Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1--TANKER/BARGE. Line out "TANKER" or "BARGE" as appropriate and place an "X" to indicate loading report.

(b) Block 2--INSPECTION OFFICE. Enter the name and location of the Government office conducting the inspection.

(c) Block 3--REPORT NO. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4--AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (LOADING). Enter the applicable Government activity.

(e) Block 5--DEPARTMENT. Enter military department owning product being shipped.

(f) Block 6--PRIME CONTRACT OR P.O. NO. Enter the contract or purchase order number.

(g) Block 7--NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (LOADING). Enter the name and address of the contractor as shown in the contract.

(h) Block 8--STORAGE CONTRACT. Enter storage contract number if applicable.

(i) Block 9--TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either "FOB Origin" or "FOB Destination."

(j) Block 10--ORDER NO. ON SUPPLIER. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11--SHIPPED TO: (RECEIVING ACTIVITY, CITY, STATE AND/OR LOCAL ADDRESS). Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12--B/L NUMBER. If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show "Com. B/L to GB/L."

(m) Block 13--REQN. OR REQUEST NO. Enter number and date from the shipping instructions.

(n) Block 14--CARGO NO. Enter the cargo number furnished by the ordering office.

(o) Block 15--VESSEL. Enter the name of tanker or barge.

(p) Block 16--DRAFT ARRIVAL. Enter the vessel's draft on arrival.

(q) Block 17--DRAFT SAILING. Enter the vessel's draft on completion of loading.

(r) Block 18--PREVIOUS TWO CARGOES. Enter the type of product constituting previous two cargoes.

(s) Block 19--PRIOR INSPECTION. Leave blank.

(t) Block 20--CONDITION OF SHORE PIPELINE. Enter condition of line (full or empty) before and after loading.

(u) Block 21--APPROPRIATION (LOADING). Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy, or Air Force (as appropriate) owned stock."

(v) Block 22--CONTRACT ITEM NO. Enter the contract item number applicable to the shipment.

(w) Block 23--PRODUCT. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24--SPECIFICATIONS. Enter the specification and amendment number shown in the contract.

(y) Block 25--STATEMENT OF QUANTITY. Enter in the "LOADED" column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than 1/2 of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 28 as to the probable or actual cause of the difference.

(z) Block 26--STATEMENT OF QUALITY.

(1) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. List waivers to technical requirements.

(3) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from

the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27--TIME STATEMENT. Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28--REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28--REMARKS. Use this space for reporting:

(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters "U.S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29--COMPANY OR RECEIVING TERMINAL. Line out "OR RECEIVING TERMINAL" and get the signature of the supplier's representative.

(dd) Block 30--CERTIFICATION BY GOVERNMENT REPRESENTATIVE. Line out "DISCHARGED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31--CERTIFICATION BY MASTER OR AGENT. Obtain the signature of the master of the vessel or its agent.

PART 7—PREPARATION OF THE DD FORM 250-1 (DISCHARGE REPORT)

F-701 Instructions.
Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1--TANKER/BARGE. Line out "TANKER" or "BARGE" as applicable and place an "X" to enter discharge report.

(b) Block 2--INSPECTION OFFICE. Enter Government activity performing inspection on the cargo received.

(c) Block 3--REPORT NO. Leave blank.

(d) Block 4--AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (LOADING). Enter Government agency shown on loading report.

(e) Block 5--DEPARTMENT. Enter Department owning product being received.

(f) Block 6--PRIME CONTRACT OR P.O. NO. Enter the contract or purchase order number shown on the loading report.

(g) Block 7--NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (LOADING). Enter the name and location of contractor who loaded the cargo.

(h) Block 8--STORAGE CONTRACT. Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9--TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Enter source of cargo.

(j) Block 10--ORDER NO. ON SUPPLIER. Make same entry appearing on loading report.

(k) Block 11--SHIPPED TO: (RECEIVING ACTIVITY, CITY, STATE AND/OR LOCAL ADDRESS). Enter receiving activity's name and location.

(l) Block 12--B/L NUMBER. Enter as appears on loading report.

(m) Block 13--REQN. OR REQUEST NO. Leave blank.

(n) Block 14--CARGO NO. Enter cargo number shown on loading report.

(o) Block 15--VESSEL. Enter name of tanker or barge discharging cargo.

(p) Block 16--DRAFT ARRIVAL. Enter draft of vessel upon arrival at dock.

(q) Block 17--DRAFT SAILING. Enter draft of vessel after discharging.

(r) Block 18--PREVIOUS TWO CARGOES. Leave blank.

(s) Block 19--PRIOR INSPECTION. Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20--CONDITION OF SHORE PIPELINE. Enter condition of line (full or empty) before and after discharging.

(u) Block 21--APPROPRIATION (LOADING). Leave blank.

(v) Block 22--CONTRACT ITEM NO. Enter the item number shown on the loading report.

(w) Block 23--PRODUCT. Enter information appearing in Block 23 of the loading report.

(x) Block 24--SPECIFICATIONS. Enter information appearing in Block 24 of the loading report.

(y) Block 25--STATEMENT OF QUANTITY. Enter applicable data in proper columns.

(1) Take "LOADED" figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point.

Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN," as applicable.

(5) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

(z) Block 26--STATEMENT OF QUALITY.

(1) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(2) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(3) Enter the results of tests performed under the heading "TEST RESULTS."

(aa) Block 27--TIME STATEMENT. Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28--REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67).

(bb) Block 28--REMARKS. Use this space for reporting important facts such as:

(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29--COMPANY OR RECEIVING TERMINAL. Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal.

(dd) Block 30--CERTIFICATION BY GOVERNMENT REPRESENTATIVE. Line out "LOADED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31--CERTIFICATION BY MASTER OR AGENT. Obtain the signature of the master of the vessel or the vessel's agent.

PART 8—DISTRIBUTION OF THE DD FORM 250-1

F-801 Distribution.
Follow the procedures at PGI F-801 for distribution of DD Form 250-1.

F-802 Corrected DD Form 250-1.
Follow the procedures at PGI F-802 when corrections to DD Form 250-1 are needed.