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207.470 Statutory requirements.

(a) Requirement for authorization of certain contracts relating to vessels, aircraft, and combat vehicles. The contracting officer shall not enter into any contract for the lease or charter of any vessel, aircraft, or combat vehicle, or any contract for services that would require the use of the contractor's vessel, aircraft, or combat vehicle, unless the Secretary of the military department concerned has satisfied the requirements of 10 U.S.C. 2401, when—

(1) The contract will be a long-term lease or charter as defined in 10 U.S.C. 2401(d)(1); or

(2) The terms of the contract provide for a substantial termination liability as defined in 10 U.S.C. 2401(d)(2). Also see PGI 207.470.

(b) Limitation on contracts with terms of 18 months or more. As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has—

(1) Considered all costs of such a contract (including estimated termination liability); and

(2) Determined in writing that the contract is in the best interest of the Government.

(c) Leasing of commercial vehicles and associated equipment. Except as provided in paragraphs (a) and (b) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and associated equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 2401a).

207.471 Funding requirements.


(b) DoD leases are either capital leases or operating leases. See FMR 7000.14-R, Volume 4, Chapter 6, Section 060206.

(c) Use procurement funds for capital leases, as these are essentially installment purchases of property.
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(a)(1) Supplies.

(i) See the guidance at PGI 208.002(a)(1)(i) to obtain information on available items in DoD’s property inventories.

(v) See subpart 208.70, Coordinated Acquisition, and subpart 208.74, Enterprise Software Agreements.
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209.402 Policy.

(d) The suspension and debarment procedures in Appendix H are to be followed by all debarring and suspending officials.

(e) The department or agency shall provide a copy of Appendix H, Debarment and Suspension Procedures, to contractors at the time of their suspension or when they are proposed for debarment, and upon request to other interested parties.

209.403 Definitions.
“Debarring and suspending official.”

(1) For DoD, the designees are—

   Army—Director, Soldier & Family Legal Services
   Navy/Marine Corps—The Assistant General Counsel (Acquisition Integrity)
   Air Force—Deputy General Counsel (Contractor Responsibility)
   Defense Advanced Research Projects Agency—The Director
   Defense Information Systems Agency—The General Counsel
   Defense Logistics Agency—The Special Assistant for Contracting Integrity
   Defense Intelligence Agency—The Senior Procurement Executive
   National Geospatial Intelligence Agency—The General Counsel
   Defense Threat Reduction Agency—The Director
   National Security Agency—The Senior Acquisition Executive
   Missile Defense Agency—The General Counsel
   United States Cyber Command—The Staff Judge Advocate
   Defense Health Agency—The General Counsel
   Overseas installations—as designated by the agency head

(2) Overseas debarring and suspending officials—

   (i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.
(ii) Debar or suspend in accordance with the procedures in FAR Subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406-2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

(3) The Defense Logistics Agency Special Assistant for Contracting Integrity is the exclusive representative of the Secretary of Defense to suspend and debar contractors from the purchase of Federal personal property under the Federal Property Management Regulations (41 CFR 101-45.6) and the Defense Materiel Disposition Manual (DoD 4160.21-M).

209.405 Effect of listing.

(a) Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the General Services Administration (GSA), GSA Suspension and Debarment Official, Office of Acquisition Policy, 1275 First Street, N.E., Washington, DC 20417. Examples of compelling reasons are—

(i) Only a debarred or suspended contractor can provide the supplies or services;

(ii) Urgency requires contracting with a debarred or suspended contractor;

(iii) The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department or agency decision not to debar or suspend the contractor; or

(iv) The national defense requires continued business dealings with the debarred or suspended contractor.

(b)(i) The Procurement Cause and Treatment Code "H" annotation in the Exclusions section of the System for Award Management (SAM Exclusions) identifies contractor facilities where no part of a contract or subcontract may be performed because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of Section 8 of Executive Order 11738, the agency head may grant an exemption permitting award to a contractor using a Code "H" ineligible facility if the agency head determines that such an exemption is in the paramount interest of the United States.
(A) The agency head may delegate this exemption authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exemption—

(1) Shall promptly notify the Environmental Protection Agency suspending and debarring official of the exemption and the corresponding justification; and

(2) May grant a class exemption only after consulting with the Environmental Protection Agency suspending and debarring official.

(C) Exemptions shall be for a period not to exceed one year. The continuing necessity for each exemption shall be reviewed annually and, upon the making of a new determination, may be extended for periods not to exceed one year.

(D) All exemptions must be reported annually to the Environmental Protection Agency suspending and debarring official.

(E) See PGI 209.405 for additional procedures and information.

209.405-2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense in SAM Exclusions as being owned or controlled by the government of a country that is a state sponsor of terrorism unless the agency head states in writing the compelling reasons for the subcontract. (See also 225.771.)

209.406 Debarment.

209.406-1 General.

(a)(i) When the debarring official decides that debarment is not necessary, the official may require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by FAR subpart 3.10; and

(B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, the debarring official must determine that the contractor has addressed adequately the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working.

209.406-2 Causes for debarment.

(1) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a “Made in America” inscription to any product
sold in or shipped to the United States or its outlying areas that was not made in the United States or its outlying areas (10 U.S.C. 2410f).

   (i) The debarring official will make a determination concerning debarment not later than 90 days after determining that a person has been so convicted.

   (ii) In cases where the debarring official decides not to debar, the debarring official will report that decision to the Director of Defense Procurement and Acquisition Policy, who will notify Congress within 30 days after the decision is made.

(2) Any contractor that knowingly provides compensation to a former DoD official in violation of section 847 of the National Defense Authorization Act for Fiscal Year 2008 may face suspension and debarment proceedings in accordance with 41 U.S.C. 2105(c)(1)(C).

209.406-3 Procedures.
Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.406-3.

209.407 Suspension.

209.407-3 Procedures.
Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official. Follow the procedures at PGI 209.407-3.

209.409 Contract clause.
Use the clause at 252.209-7004, Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism, in solicitations and contracts with a value of $150,000 or more.

209.470 Reserved.

209.471 Congressional Medal of Honor.
In accordance with Section 8118 of Pub. L. 105-262, do not award a contract to, extend a contract with, or approve the award of a subcontract to any entity that, within the preceding 15 years, has been convicted under 18 U.S.C. 704 of the unlawful manufacture or sale of the Congressional Medal of Honor. Any entity so convicted will be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration.
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A justification and approval is required to use brand name or equal purchase descriptions—

(1) When using sealed bidding or negotiated acquisition procedures (see 206.302-1(c)(2) for justification requirements); or

(2) When using the simplified procedures for certain commercial items at FAR 13.5 (see 213.501(a)(ii) for justification requirement).

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

211.107 Solicitation provision.

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

211.170 Use of proprietary specifications or standards.
A justification and approval is required to use proprietary specifications and standards—

(1) When using sealed bidding or negotiated acquisition procedures (see 206.302-1(S-70) for justification requirements); or

(2) When using the simplified procedures for certain commercial items at FAR 13.5 (see 213.501(a)(ii) for justification requirements).
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212.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.


(iii) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(iv) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(v) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vi) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.


(viii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242-7004).

(ix) 107 Stat 1720 (Section 843(a), Pub. L. 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(x) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3 (section 8065 of Pub. L. 107-117).

(xi) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and similar sections in subsequent DoD appropriations acts.

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

(ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.403-1(b)(3)).
212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 2313(c), Examination of Records of a Contractor.


(iv) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.

(v) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.


(vii) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.

(viii) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(ix) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(x) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.


(xii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.


(xv) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at 252.247-7023, Transportation of Supplies by Sea).

(xvi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7009-3 (section 8065 of Pub. L. 107-117).

(xvii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and similar sections in subsequent DoD appropriations acts.
(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

   (i) 10 U.S.C. 2393(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

   (ii) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

212.505 Applicability of certain laws to contracts for the acquisition of COTS items.
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   (c) See PGI 216.401(c) for information on the Defense Acquisition University Award and Incentive Fees Community of Practice.

   (d)(i) Except as provided in paragraph (d)(ii), the determination and findings justifying that the use of an incentive- or award-fee contract is in the best interest of the Government, may be signed by the head of contracting activity or a designee—

      (A) No lower than one level below the head of the contracting activity for award fee contracts; or

      (B) One level above the contracting officer for incentive fee contracts.

   (ii) For cost-reimbursement incentive- or award fee contracts valued in excess of $25 million, the determination and findings justifying that the use of this type of contract is in the best interest of the Government shall be signed by the head of the contracting activity. See DFARS 216.301-3(2).

   (e) Award-fee plans required in FAR 16.401(e) shall be incorporated into all award-fee type contracts. Follow the procedures at PGI 216.401(e) when planning to award an award-fee contract.

216.401-71  Objective criteria.

   (1) Contracting officers shall use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price-incentive contracts.

   (2) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government also to incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (i.e., cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

   (3) See PGI 216.401(e) for guidance on the use of award-fee contracts.

216.402  Application of predetermined, formula-type incentives.

216.402-2  Performance incentives.

   (1) See PGI 216.402-2 for guidance on establishing performance incentives.

   (2) Contracting officers shall ensure requirements about the payment of incentive fees or the imposition of penalties are included in the solicitation for a contract for the engineering and manufacturing development or production of a weapon system, including embedded software, if the program manager or...
comparable requiring activity official exercising program manager responsibilities includes—

(i) Provisions for the payment of incentive fees to the contractor, based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract; or

(ii) The imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements (10 U.S.C. 2443).

216.403 Fixed-price incentive contracts.

216.403-1 Fixed-price incentive (firm target) contracts.

(b) Application.

(1) The contracting officer shall give particular consideration to the use of fixed-price incentive (firm target) contracts, especially for acquisitions moving from development to production.

(2) The contracting officer shall pay particular attention to share lines and ceiling prices for fixed-price incentive (firm target) contracts, with a 120 percent ceiling and a 50/50 share ratio as the point of departure for establishing the incentive arrangement.

(3) See PGI 216.403-1 for guidance on the use of fixed-price incentive (firm target) contracts.

216.403-2 Fixed-price incentive (successive targets) contracts.

See PGI 216.403-2 for guidance on the use of fixed-price incentive (successive targets) contracts.

216.405 Cost-reimbursement incentive contracts.

216.405-1 Cost-plus-incentive-fee contracts.

See PGI 216.405-1 for guidance on the use of cost-plus-incentive-fee contracts.

216.405-2 Cost-plus-award-fee contracts.

(1) Award-fee pool. The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer shall perform an analysis of appropriate fee distribution to ensure at least 40 per cent of the award fee is available for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract. The percentage of award fee available for the final evaluation may be set below 40 per cent if the contracting officer determines that a lower percentage is appropriate, and this determination is approved by the head of the contracting activity (HCA). The HCA may not delegate this approval authority.

(2) Award-fee evaluation and payments. Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. (This
prohibition does not apply to base-fee payments.) The fee-determining official’s rating for award-fee evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. The final award-fee payment will be consistent with the fee-determining official's final evaluation of the contractor’s overall performance against the cost, schedule, and performance outcomes specified in the award-fee plan.

(3) Limitations.

(i) The cost-plus-award-fee contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a cost-plus-award-fee contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to cost-plus-award-fee contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

(4) See PGI 216.405-2 for guidance on the use of cost-plus-award-fee contracts.

216.405-2-70 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

(a) Definitions.

“Covered incident” and “serious bodily injury,” as used in this section, are defined in the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) The contracting officer shall include in the evaluation criteria of any award-fee plan, a review of contractor and subcontractor actions that jeopardized the health or safety of Government personnel, through gross negligence or reckless disregard for the safety of such personnel, as determined through—
(1) Conviction in a criminal proceeding, or finding of fault and liability in a civil or administrative proceeding (in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84)); or

(2) If a contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts, a final determination of contractor or subcontractor fault resulting from a DoD investigation (in accordance with section 834 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383)).

(c) In evaluating the contractor’s performance under a contract that includes the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, the contracting officer shall consider reducing or denying award fees for a period, if contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel during such period. The contracting officer’s evaluation also shall consider recovering all or part of award fees previously paid for such period.

216.405-2-71 Award fee reduction or denial for failure to comply with requirements relating to performance of private security functions.

(a) In accordance with section 862 of the National Defense Authorization Act for Fiscal Year 2008, as amended, the contracting officer shall include in any award-fee plan a requirement to review contractor compliance with, or violation of, applicable requirements of the contract with regard to the performance of private security functions in an area of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander (see 225.370).

(b) In evaluating the contractor’s performance under a contract that includes the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, the contracting officer shall consider reducing or denying award fees for a period if the contractor fails to comply with the requirements of the clause during such period. The contracting officer’s evaluation also shall consider recovering all or part of award fees previously paid for such period.

216.406 Contract clauses.

(e) Use the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award-fee provisions.

216.470 Other applications of award fees.
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218.201 Contingency operation.

(1) *Selection, appointment, and termination of appointment.* Contracting officer qualification requirements pertaining to a baccalaureate degree do not apply to DoD employees or members of the armed forces who are in a contingency contracting force. See 201.603-2(2).

(2) *Policy for item unique identification.* Contractors will not be required to provide DoD item unique identification if the items, as determined by the head of the contracting activity, are to be used to support a contingency operation. See 211.274-2(b).

(3) *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 purchase or payment is for an overseas transaction by a contracting officer in support of a contingency operation, or for training exercises in preparation for overseas contingency, humanitarian, or peacekeeping operations. See 213.201(g) and 213.270(c)(3) and (5).

(4) *Governmentwide commercial purchase card.* A contracting office supporting a contingency operation or a humanitarian or peacekeeping operation may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed the simplified acquisition threshold if certain conditions are met. See 213.301(3).

(5) *Imprest funds and third party drafts.* Imprest funds are authorized for use without further approval for overseas transactions at or below the micro-purchase threshold in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.305-3(d)(iii)(A).

(6) *Standard Form (SF) 44, Purchase Order-Invoice-Voucher.* SF 44s may be used for purchases not exceeding the simplified acquisition threshold for overseas transactions by contracting officers in support of a contingency operation or a humanitarian or peacekeeping operation. See 213.306(a)(1)(B).

(7) *Only one offer.* The requirements at sections 215.371-2 do not apply to acquisitions, as determined by the head of the contracting activity, in support of a contingency operation. See 215.371-4(a)(2).

(8) *Approval of determination and findings for time-and-materials or labor-hour contracts.* The approval requirements in paragraphs (d)(i)(A)(1) and (2) of this section do not apply to contracts that, as determined by the head of the contracting activity, support contingency. See 216.601(d)(3).

(9) *Undefinitized contract actions.* The head of the agency may waive certain limitations for undefinitized contract actions if the head of the agency determines that the waiver is necessary to support a contingency operation or a humanitarian or peacekeeping operation. See 217.7404-5(b).
(10) **Prohibited sources.** DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control. See 225.701-70.

(11) **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.

(12) **Electronic submission and processing of payment requests.** Contractors do not have to submit payment requests in electronic form for contracts awarded by deployed contracting officers in the course of military operations, including contingency operations or humanitarian or peacekeeping operations. See 232.7002(a)(4).

**218.202 Defense or recovery from certain events.**
For acquisitions that, as determined by the head of the contracting activity, are to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to facilitate provision of international disaster assistance; or to support response to an emergency or major disaster, the following requirements do not apply:

(1) **Policy for unique item identification at 211.274-2(a).** Contractors are not required to provide DoD unique item identification if the items are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. However, contractors are not exempt from this requirement if the items are to be used to facilitate defense against or recovery from cyber attack. See 211.274-2(b).

(2) **Only one offer requirements at section 215.371-2.** See 215.371-4(a)(2).

(3) **Approval of determination and findings for time-and-materials or labor-hour contracts at 216.601(d)(i)(A)(1) and (2).** See 216.601(d)(3).

**218.203 Emergency declaration or major disaster declaration.**

(1) **Establishing or maintaining alternative sources.** PGI contains a sample format for Determination and Findings citing the authority of FAR 6.202(a), regarding exclusion of a particular source in order to establish or maintain an alternative source or sources. Alternate 2 of the sample format addresses having a supplier available for furnishing supplies or services in case of a national emergency. See PGI 206.202.
(2) **Electronic submission and processing of payment requests.** Contractors do not have to submit payment requests in electronic form for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies. See 232.7002(a)(4).

### 218.204 Humanitarian or peacekeeping operation.
The following requirements do not apply to acquisitions that, as determined by the head of the contracting activity, are in support of humanitarian or peacekeeping operations:

(1) **Policy for item unique identification at** 211.274-2(a). See 211.274-2(b).

(2) **Only one offer requirements at sections** 215.371-2. See 215.371-4(a)(2).

(3) **Approval of determination and findings for time-and-materials or labor-hour contracts at** 216.601(d)(i)(A)(1) and (2). See 216.601(d)(3).

### 218.270 Head of contracting activity determinations.
The term “head of the agency” is replaced with “head of the contracting activity,” as defined in FAR 2.101, in the following locations:

(a) FAR 2.101: definition of “simplified acquisition threshold.”

(b) FAR 12.102(f).

(c) FAR 13.201(g).

(d) FAR 13.500(c)(1).

(e) FAR 18.2.

### 218.271 Use of electronic business tools.
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222.402-70 Installation support contracts.

(a) Apply both the Service Contract Labor Standards statute and the Construction Wage Rate Requirements statute to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000.

(b) Service Contract Labor Standards statute coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the Service Contract Labor Standards. Apply Service Contract Labor Standards clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) Construction Wage Rate Requirements statute coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the Construction Wage Rate Requirements statute. Apply Construction Wage Rate Requirements clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either Construction Wage Rate Requirements painting/repairs or Service Contract Labor Standards maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the Construction Wage Rate Requirements or the Service Contract Labor Standards. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is Service Contract Labor Standards maintenance or Construction Wage Rate Requirements painting/repairs, apply the following rules:

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the Construction Wage Rate Requirements.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the Service Contract Labor Standards.
(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the Construction Wage Rate Requirements statute regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the Construction Wage Rate Requirements statute by splitting individual tasks between orders or contracts.

222.403 Statutory, Executive order, and regulatory requirements.

222.403-70 Department of Labor regulations.
Direct all questions regarding Department of Labor regulations to the labor advisor.

222.404 Construction Wage Rate Requirements statute wage determinations.
Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of $500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(3) The report control number is 1671-DOL-AN.

222.404-2 General requirements.

(c)(5) Follow the procedures at PGI 222.404-2(c)(5) when seeking clarification of the proper application of construction wage rate schedules.

222.406 Administration and enforcement.

222.406-1 Policy.

(a) General. The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and
(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) Preconstruction letters and conferences.

(1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(1) Construction Wage Rate Requirements statute;

(2) Contract Work Hours and Safety Standards statute;

(3) Copeland (Anti-Kickback) Act;

(4) Parts 3 and 5 of the Secretary of Labor's Regulations (Parts 3 and 5, Subtitle A, Title 29, CFR); and

(5) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(1) Employment of foremen, laborers, mechanics, and others;

(2) Wages and fringe benefits payments, payrolls, and statements;

(3) Differentiation between subcontractors and suppliers;

(4) Additional classifications;

(5) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(6) Penalties and sanctions for violations of the labor standards provisions; and

(7) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, the contracting officer shall confer with the prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;
(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406-2.

222.406-6 Payrolls and statements.

(a) Submission. Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406-8 Investigations.

(a) Before beginning an investigation, the investigator shall inform the contractor of the general scope of the investigation, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at PGI 222.406-8(a).

(c) Contractor notification.

(4)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards (CWHSS) statute. The notification shall inform the contractor that—

(1) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(2) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due care, or the assessment was computed improperly.

(B) If an appeal is received, the contracting officer shall process the appeal in accordance with department or agency regulations.

(d) Contracting officer’s report. Forward a detailed enforcement report or summary report to the agency head in accordance with agency procedures. Include in the report, as a minimum, the information specified at PGI 222.406-8(d).

222.406-9 Withholding from or suspension of contract payments.

(a) Withholding from contract payments. The contracting officer shall contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor’s liability for Wage Rate Requirements or CWHSS statute wage underpayments or liquidated damages.

(c) Disposition of contract payments withheld or suspended.
(3) **Limitation on forwarding or returning funds.** When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor will retain withheld funds pending completion of an investigation or other administrative proceedings.

(4) **Liquidated damages.**

(A) The agency head may adjust liquidated damages of $500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over $500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

222.406-10 **Disposition of disputes concerning construction contract labor standards enforcement.**

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

222.406-13 **Semiannual enforcement reports.**
Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction work subject to the Construction Wage Rate Requirements statute and the CWHSS statute—

(1) Period covered;

(2) Number of prime contracts awarded;

(3) Total dollar amount of prime contracts awarded;

(4) Number of contractors/subcontractors against whom complaints were received;

(5) Number of investigations conducted;

(6) Number of contractors/subcontractors found in violation;

(7) Amount of wage restitution found due under—
(i) Construction Wage Rate Requirements statute; and
(ii) CWHSS statute;

(8) Number of employees due wage restitution under—
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(9) Amount of liquidated damages assessed under the CWHSS statute—
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222.604 Exemptions.

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223.802 Policy.
No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with Section 326, Pub. L. 102-484 (10 U.S.C. 2301 (repealed) note). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.
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225.701-70 Exception. DoD personnel are authorized to make emergency acquisitions in direct support of U.S. or allied forces deployed in military contingency, humanitarian, or peacekeeping operations in a country or region subject to economic sanctions administered by the Department of the Treasury, Office of Foreign Assets Control.

225.770 Prohibition on acquisition of certain items from Communist Chinese military companies. This section implements section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), and section 1296 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). See PGI 225.770 for additional information relating to this statute, the terms used in this section, the United States Munitions List (USML), and the 600 series of the Commerce Control List (CCL).

225.770-1 Definitions. As used in this section—

“Component” means an item that is useful only when used in conjunction with an end item (15 CFR 772.1 and 22 CFR 120.45(b)).

“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.

“Part” means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally subject to disassembly without the destruction or impairment of designed use (15 CFR 772.1 and 22 CFR 120.45(d)).

225.770-2 Prohibition. Do not acquire items covered by the USML or the 600 series of the CCL, through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML or the 600 series of the CCL.

225.770-3 Exceptions. The prohibition in 225.770-2 does not apply to items acquired—

(a) In connection with a visit to the People's Republic of China by a vessel or an
aircraft of the U.S. armed forces;

(b) For testing purposes; or

(c) For the purpose of gathering intelligence.

225.770-4 Identifying items covered by the USML or the 600 series of the CCL.

(a) Before issuance of a solicitation, the requiring activity will notify the contracting officer in writing whether the items to be acquired are covered by the USML or the 600 series of the CCL. The notification will identify any covered item(s) and will provide the pertinent USML reference(s) from 22 CFR part 121 or the 600 series of the CCL references from 15 CFR part 774, Supplement No. 1.

(b) The USML includes defense articles and defense services that fall into 21 categories. The CCL includes ten categories and five product groups in each category, many of which contain 600 series items. Since not all items covered by the USML or 600 series of the CCL are themselves munitions (e.g., protective personnel equipment, military training equipment), the requiring activity should consult the USML and the 600 series of the CCL before concluding that an item is or is not covered. See PGI 225.770-4.

225.770-5 Waiver of prohibition.

(a) The prohibition in 225.770-2 may be waived, on a case-by-case basis, if an official identified in paragraph (b) of this subsection determines that a waiver is necessary for national security purposes.

(b) The following officials are authorized, without power of delegation, to make the determination specified in paragraph (a) of this subsection:

(1) The Under Secretary of Defense (Acquisition and Sustainment).

(2) The Secretaries of the military departments.


(c)(1) The official granting a waiver shall submit a report to the congressional defense committees, with a copy to the Director of Defense Procurement and Acquisition Policy (see PGI 225.770-5), not less than 15 days before issuing the waiver.

(2) In the report, the official shall—

(i) Identify the specific reasons for the waiver; and

(ii) Include recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.
225.771-0 **Scope.**
This section implements 10 U.S.C. 2327(b).

225.771-1 **Definition.**
“State sponsor of terrorism,” as used in this section, is defined in the provision at 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

225.771-2 **Prohibition.**

(a) The contracting officer shall not award a contract of $150,000 or more to a firm when a foreign government that is a state sponsor of terrorism owns or controls, either directly or indirectly, a significant interest in—

(i) The firm;

(ii) A subsidiary of the firm; or

(iii) Any other firm that owns or controls the firm.

(b) For restrictions on subcontracting with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a country that is a state sponsor of terrorism, see 209.405-2.

225.771-3 **Notification.**
Any disclosure that the government of a country that is a state sponsor of terrorism has a significant interest in an offeror, a subsidiary of an offeror, or any other firm that owns or controls an offeror shall be forwarded through agency channels to the address at PGI 225.771-3.

225.771-4 **Waiver of prohibition.**
The prohibition in 225.771-2 may be waived if the Secretary of Defense determines that a waiver is not inconsistent with the national security objectives of the United States in accordance with 10 U.S.C. 2327(c).

225.771-5 **Solicitation provision.**
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, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items (other than commercial satellite services), that are expected to result in contracts of $150,000 or more. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7050 in the solicitation.

225.772 **Prohibition on acquisition of certain foreign commercial satellite services.**

225.772-0 **Scope.**
This section implements 10 U.S.C. 2279.

225.772-1 **Definitions.**
As used in this section—

“Covered foreign country” means—

(1) The People’s Republic of China;

(2) North Korea;

(3) The Russian Federation; or

(4) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

“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)

“Foreign entity” means—

(1) 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.

(2) Notwithstanding paragraph (1) 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 December 14, 2020, state sponsors of terrorism include Iran, North Korea, and Syria. (10 U.S.C. 2327)

225.772-2 Prohibitions.
Except as provided in 225.772-4, the contracting officer shall not award a contract for commercial satellite services to—

(a)(1) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—
(i) 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;

(ii) The foreign entity plans to or is expected to provide satellite services under the contract from a covered foreign country; or

(iii) Entering into such contract would create an unacceptable cybersecurity risk for DoD, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy; or

(2) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (a) of this section; or

(b)(1) Any entity, except as provided in paragraph (b)(2) of this section, 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 services will be provided using 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—

(A) Designed or manufactured 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.

(2) The prohibition in paragraph (b)(1) of this section does not apply with respect to launch services for which a satellite service provider has a contract or other agreement 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.

225.772-3 Procedures.

(a)(1) The contracting officer shall not award to any source that is a foreign satellite service provider or is offering satellite services provided by a foreign entity if such award presents an unacceptable cybersecurity risk, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy.
(2) When procuring commercial satellite services from a foreign entity, the contracting officer shall review the exclusion records in the System for Award Management (SAM) database as required at FAR 9.405, to ensure that an entity identified in, or otherwise known to be involved in, the otherwise successful offer is not listed as ineligible in the SAM database (see FAR 9.405).

(b) If an offeror discloses information in accordance with paragraph (c) of the provision 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, the contracting officer—

(1) Shall forward the information regarding the offeror through agency channels to the address at PGI 225.772-3; and

(2) Shall not award to that offeror, unless an exception is determined to apply in accordance with 225.772-4.

(c)(1) If the otherwise successful offeror provides negative responses to all representations in the provision at 252.225-7049, the contracting officer may rely on the representations, unless the contracting officer has an independent reason to question the representations.

(2) If the contracting officer has an independent reason to question a negative representation of the otherwise successful offeror, the contracting officer shall consult with the office specified in PGI 225.772-3, prior to deciding whether to award to that offeror.

225.772-4 Exception.

(a) The prohibitions in 225.772-2(a) and (b) do not apply if—

(1) The Under Secretary of Defense for Acquisition and Sustainment, or the Under Secretary of Defense for Policy, without power of redelegation, determines that it is in the national security interest of the United States to enter into such contract; and

(2) Not later than seven days before entering into such contract, the Under Secretary of Defense making the determination in paragraph (a)(1) of this section, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment, in accordance with 10 U.S.C. 2279.

(b) If requesting an exception pursuant to paragraph (a) of this section, the contracting officer shall forward the request through agency channels to the address at PGI 225.772-3, providing any available information necessary for the Under Secretary of Defense making the determination in paragraph (a)(1) of this section to evaluate the request and perform a national security assessment, in accordance with 10 U.S.C. 2279.

225.772-5 Solicitation provision and contract clauses.

(a) Use the provision at 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, in solicitations that include the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7049 in the solicitation.
(b) Use the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, in solicitations and contracts for the acquisition of commercial satellite services, including solicitation and contracts using FAR part 12 procedures for the acquisition of commercial items.

(c) Use the clause at 252.239-7018, Supply Chain Risk, as prescribed at 239.7306(b), when applicable.
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SUBPART 228.1—BONDS AND OTHER FINANCIAL PROTECTIONS  
(Revised October 29, 2021)

228.102  Performance and payment bonds and alternative payment protections for construction contracts.

228.102-1  General.  
The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost-type contracts with fixed-price construction subcontracts over $40,000, require the prime contractor to obtain from each of its construction subcontractors performance and payment protections in favor of the prime contractor as follows:

(1) For fixed-price construction subcontracts over $40,000, but not exceeding $150,000, payment protection sufficient to pay labor and material costs, using any of the alternatives listed at FAR 28.102-1(b)(1).

(2) For fixed-price construction subcontracts over $150,000—

   (i) A payment bond sufficient to pay labor and material costs; and

   (ii) A performance bond in an equal amount if available at no additional cost.

228.102-70  Defense Environmental Restoration Program construction contracts.  
For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701—

(a) Any rights of action under the performance bond shall only accrue to, and be for the exclusive use of, the obligee named in the bond;

(b) In the event of default, the surety’s liability on the performance bond is limited to the cost of completion of the contract work, less the balance of unexpended funds. Under no circumstances shall the liability exceed the penal sum of the bond;

(c) The surety shall not be liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract; and

(d) Once it has taken action to meet its obligations under the bond, the surety is entitled to any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

228.105  Other types of bonds.  
Fidelity and forgery bonds generally are not required but are authorized for use when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.106  Administration.
228.106-7 Withholding contract payments.

(a) Withholding may be appropriate in other than construction contracts (see FAR 32.112-1(b)).
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231.205-1 Public relations and advertising costs.

(e) See 225.7303-2(e) for allowability provisions affecting foreign military sales contracts.

(f) Unallowable public relations and advertising costs include the following:

(1) Monies paid to the Government associated with the leasing of Government equipment, including lease payments and reimbursements for support services, except for foreign military sales contracts as provided for at 225.7303-2.

231.205-6 Compensation for personal services.

(f)(1) In accordance with Section 8122 of Pub. L. 104-61, and similar sections in subsequent Defense appropriations acts, costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 or subsequent appropriations. This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205-70 for the definitions of “business combination” and “restructuring costs.”)

(m)(1) Fringe benefit costs that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

231.205-18 Independent research and development and bid and proposal costs.

(a) Definitions. As used in this subsection—

(i) “Covered contract” means a DoD prime contract for an amount exceeding the simplified acquisition threshold, except for a fixed-price contract without cost incentives. The term also includes a subcontract for an amount exceeding the simplified acquisition threshold, except for a fixed-price subcontract without cost incentives under such a prime contract.

(ii) “Covered segment” means a product division of the contractor that allocated more than $1,100,000 in independent research and development and bid and proposal (IR&D/B&P) costs to covered contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, the term means that contractor as a whole. A product division of the contractor that allocated less than $1,100,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year is not subject to the limitations in paragraph (c) of this subsection.

(iii) “Major contractor” means any contractor whose covered segments allocated a total of more than $11,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year. For purposes of calculating the dollar threshold amounts to
determine whether a contractor meets the definition of “major contractor,” do not include contractor segments allocating less than $1,100,000 of IR&D/B&P costs to covered contracts during the preceding fiscal year.

(c) Allowability.

(i) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability.

(ii) See 225.7303-2(c) for allowability provisions affecting foreign military sale contracts.

(iii) For major contractors, the following limitations apply:

(A) The amount of IR&D/B&P costs allowable under DoD contracts shall not exceed the lesser of—

(1) Such contracts’ allocable share of total incurred IR&D/B&P costs; or

(2) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(B) Allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD, including activities intended to accomplish any of the following:

(1) Enable superior performance of future U.S. weapon systems and components.

(2) Reduce acquisition costs and life-cycle costs of military systems.

(3) Strengthen the defense industrial and technology base of the United States.

(4) Enhance the industrial competitiveness of the United States.

(5) Promote the development of technologies identified as critical under 10 U.S.C. 2522.

(6) Increase the development and promotion of efficient and effective applications of dual-use technologies.

(7) Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(C) For annual IR&D costs to be allowable—

(1) The IR&D projects generating the costs must be reported to the Defense Technical Information Center (DTIC) using the DTIC’s on-line input form and instructions at http://www.defenseinnovationmarketplace.mil;
(2) The inputs must be updated at least annually and when the project is completed;

(3) Copies of the input and updates must be made available for review by the cognizant administrative contracting officer (ACO) and the cognizant Defense Contract Audit Agency auditor to support the allowability of the costs; and

(iv) Contractors not meeting the threshold of a major contractor are encouraged to use the DTIC online input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors’ IR&D activities.

(v) For major contractors, the ACO or corporate ACO shall—

(A) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(B) Provide the results of the determination to the contractor.

(vi) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (also see 242.771-3(a)).

231.205-19 Insurance and indemnification.

(e) In addition to the cost limitations in FAR 31.205-19(e), self-insurance and purchased insurance costs are subject to the requirements of the clauses at 252.217-7012, Liability and Insurance, and 252.228-7001, Ground and Flight Risk.

231.205-22 Lobbying and political activity costs.

(a) Costs associated with preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed also are unallowable (10 U.S.C. 2249).

231.205-70 External restructuring costs.

(a) Scope. This subsection—

(1) Prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD; and

(2) Implements 10 U.S.C. 2325.

(b) Definitions. As used in this subsection:

(1) “Business combination” means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.
(2) “External restructuring activities” means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) “Restructuring activities” means nonroutine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor’s productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) “Restructuring costs” means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than $2.5 million, the costs shall not be subject to the audit, review, and determination requirements of paragraph (c)(4) of this subsection; instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.

(5) “Restructuring savings” means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) Limitations on cost allowability. Restructuring costs associated with external restructuring activities shall not be allowed unless—

(1) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(2) An audit of projected restructuring costs and restructuring savings is performed;

(3) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d) of this subsection; and

(4)(i) The official designated in paragraph (c)(4)(ii) of this subsection determines in writing that the audited projected savings, on a present value basis, for DoD resulting from the restructuring will exceed either—

(A) The costs allowed by a factor of at least two to one; or
(B) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(ii)(A) If the amount of restructuring costs is expected to exceed $25 million over a 5-year period, the designated official is the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy. This authority may not be delegated below the level of an Assistant Secretary of Defense.

(B) For all other cases, the designated official is the Director of the Defense Contract Management Agency. The Director may not delegate this authority.

(d) Procedures and ACO responsibilities. As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall follow the procedures at PGI 231.205-70(d).

(e) Information needed to obtain a determination.

(1) The novation agreement (if one is required).

(2) The contractor’s restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO’s recommendation for a determination. This recommendation must clearly indicate one of the following, consistent with paragraph (c)(4)(i) of this subsection:

(i) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one on a present value basis.

(ii) The business combination will result in the preservation of a critical capability that might otherwise be lost to DoD, and the audited projected savings for DoD will exceed the costs allowed on a present value basis.

(f) Contracting officer responsibilities.

(1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor’s forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The decision to use a repricing clause will depend upon the particular circumstances involved, including—
(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period;

(iv) Whether the contracting parties are able to make a reasonable estimate of the impact of restructuring on the contract; and

(v) The size of the potential dollar impact of restructuring on the contract.

(3) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

231.205-71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.


(b) The costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303;

(2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101 or were obtained by the contractor in accordance with the clause at 252.246-7008, Sources of Electronic Parts; and

(3) The contractor—

(i) Becomes aware of the counterfeit electronic parts or suspect counterfeit electronic parts through inspection, testing, and authentication efforts of the contractor or its subcontractors; through a Government Industry Data Exchange Program (GIDEP) alert; or by other means; and

(ii) Provides timely (i.e., within 60 days after the contractor becomes aware) written notice to—

(A) The cognizant contracting officer(s); and
(B) GIDE P (unless the contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States; or the counterfeit electronic part or suspect counterfeit electronic part is the subject of an on-going criminal investigation).
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232.702 Policy.
Fixed-price contracts shall be fully funded except as permitted by 232.703-1.

232.703 Contract funding requirements.

232.703-1 General.

(1) A fixed-price contract may be incrementally funded only if—

   (i) The contract (excluding any options) or any exercised option—

      (A) Is for severable services;

      (B) Does not exceed one year in length; and

      (C) Is incrementally funded using funds available (unexpired) as of the date
          the funds are obligated; or

   (ii) The contract uses funds available from multiple (two or more) fiscal years
        and—

        (A) The contract is funded with research and development appropriations;

        or

        (B) Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as
funds are available.

232.703-3 Contracts crossing fiscal years.

   (b) 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).

232.703-70 Military construction appropriations act restriction.
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by the acts for payments under cost-plus-fixed-fee contracts (see 216.306(c)).

232.704 Limitation of cost or funds.

232.704-70 Incrementally funded fixed-price contracts.

   (a) Upon receipt of the contractor’s notice under paragraph (c) of the clause at
       252.232-7007, Limitation of Government’s Obligation, the contracting officer shall
       promptly provide written notice to the contractor that the Government is—
(1) Allotting additional funds for continued performance and increasing the Government’s limitation of obligation in a specified amount;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

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

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

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government’s decision and terminate for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 252.232-7007, Limitation of Government’s Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.706 Contract clauses.

232.706-70 Clause for limitation of Government’s obligation.
Use the clause at 252.232-7007, Limitation of Government’s Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor’s notification period, in paragraph (c) of the clause, from “ninety” to “thirty” or “sixty” days, as appropriate.
SUBPART 232.8—ASSIGNMENT OF CLAIMS
(Revised October 29, 2021)

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Pursuant to 41 U.S.C. 6305, and in accordance with Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense (Acquisition, Technology, and Logistics) delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the Federal Register on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government's interest, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

232.805 Procedure.

(b) The assignee shall forward—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.
232.806 Contract clauses.

(a)(1) Use the clause at 252.232-7008, Assignment of Claims (Overseas), instead of the clause at FAR 52.232-23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

(2) Use Alternate I with the clause at FAR 52.232-23, Assignment of Claims, unless otherwise authorized under 232.803(d).
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233.210  Contracting officer’s authority.  
See PGI 233.210 for guidance on reviewing a contractor’s claim.

233.215  Contract clauses.  
Use Alternate I of the clause at FAR 52.233-1, Disputes, when—

(1) The acquisition is for—

   (i) Aircraft

   (ii) Spacecraft and launch vehicles

   (iii) Naval vessels

   (iv) Missile systems

   (v) Tracked combat vehicles

   (vi) Related electronic systems;

(2) The contracting officer determines that continued performance is—

   (i) Vital to the national security, or

   (ii) Vital to the public health and welfare; or

(3) The head of the contracting activity determines that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

233.215-70  Additional contract clause.  
Use the clause at 252.233-7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside the United States and its outlying areas, unless otherwise provided for in a government-to-government agreement.
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SUBPART 239.76—CLOUD COMPUTING
(Revised October 29, 2021)

239.7600 Scope of subpart.
This subpart prescribes policies and procedures for the acquisition of cloud computing services.

239.7601 Definitions.
As used in this subpart—

“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.

“Government data” means any information, document, media, or machine readable material regardless of physical form or characteristics, that is created or obtained by the Government in the course of official Government business.

“Government-related data” means any information, document, media, or machine readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor’s business records (e.g., financial records, legal records, 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.

239.7602 Policy and responsibilities.

239.7602-1 General.

(a) Generally, DoD shall acquire cloud computing services using commercial terms and conditions that are consistent with Federal law, and an agency’s needs, including
those requirements specified in this subpart. Some examples of commercial terms and conditions are license agreements, End User License Agreements (EULAs), Terms of Service (TOS), or other similar legal instruments or agreements. Contracting officers shall incorporate any applicable service provider terms and conditions into the contract by attachment or other appropriate mechanism. Contracting officers shall carefully review commercial terms and conditions and consult counsel to ensure these are consistent with Federal law, regulation, and the agency’s needs.

(b)(1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall only award a contract to acquire cloud computing services from a cloud service provider (e.g., contractor or subcontractor, regardless of tier) that has been granted provisional authorization by Defense Information Systems Agency, at the level appropriate to the requirement, to provide the relevant cloud computing services 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 https://public.cyber.mil/dccs/.

(2) The contracting officer may award a contract to acquire cloud computing services from a cloud service provider that has not been granted provisional authorization when—

(i) The requirement for a provisional authorization is waived by the DoD Chief Information Officer; or

(ii) The cloud computing service requirement is for a private, on-premises version that will be provided from U.S. Government facilities. Under this circumstance, the cloud service provider must obtain a provisional authorization prior to operational use.

(c) When contracting for cloud computing services, the contracting officer shall ensure the following information is provided by the requiring activity:

(1) Government data and Government-related data descriptions.

(2) Data ownership, licensing, delivery and disposition instructions specific to the relevant types of Government data and Government-related data (e.g., DD Form 1423, Contract Data Requirements List; work statement task; line item). Disposition instructions shall provide for the transition of data in commercially available, or open and non-proprietary format (and for permanent records, in accordance with disposition guidance issued by National Archives and Record Administration).

(3) Appropriate requirements to support applicable inspection, audit, investigation, or other similar authorized activities specific to the relevant types of Government data and Government-related data, or specific to the type of cloud computing services being acquired.

(4) Appropriate requirements to support and cooperate with applicable system-wide search and access capabilities for inspections, audits, investigations.
239.7602-2 Required storage of data within the United States or outlying areas.

(a) Cloud computing service providers are required to maintain within the 50 states, the District of Columbia, or outlying areas of the United States, all Government data that is not physically located on DoD premises, unless otherwise authorized by the authorizing official, as described in DoD Instruction 8510.01, in accordance with the SRG.

(b) The contracting officer shall provide written notification to the contractor when the contractor is permitted to maintain Government data at a location outside the 50 States, the District of Columbia, and outlying areas of the United States. See PGI 239.7602-2 for additional guidance.

239.7603 Procedures.
Follow the procedures relating to cloud computing at PGI 239.7603.

239.7604 Solicitation provision and contract clause.

(a) Use the provision at 252.239-7009, Representation of Use of Cloud Computing, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial item, for information technology services.

(b) Use the clause at 252.239-7010, Cloud Computing Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial item, for information technology services.
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242.1203 Processing agreements.
The responsible contracting officer shall process and execute novation and change-of-name agreements in accordance with the procedures at PGI 242.1203.

242.1204 Applicability of novation agreements.

(i) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 231.205-70, the cognizant contracting officer shall include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(i):

“(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) (and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts), and the requirements included in DFARS 231.205-70 are met. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth a cumulative cost ceiling for restructuring projects and the period to which such costs shall be assigned.”
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245.602 Reutilization of Government property.

245.602-1 Inventory disposal schedules.

For termination inventory, plant clearance officers shall verify inventory schedules, either directly or through appropriate technical personnel, to determine the following:

(a) **Allocability**.

   (1) Review contract requirements, delivery schedules, bills of material, and other pertinent documents to determine whether schedules include property that—

      (i) Is appropriate for use on the contract; or

      (ii) Exceeds the quantity required for completion of the contract, but could be diverted to other commercial work or Government use.

   (2) Review the contractor's—

      (i) Recent purchases of similar material;

      (ii) Plans for current and scheduled production;

      (iii) Stock record entries; and

      (iv) Bills of material for similar items.

(b) **Quantity**. Take measures to provide assurance that available inventory is in accordance with quantities listed on the inventory schedules. Quantities may be verified by actual item count, acceptance of labeled quantities in unopened/sealed packages, scale counts, or other appropriate methods.

   (c) **Condition**. Ensure that the physical condition of the property is reasonably consistent with the Federal Condition Code supplied by the contractor.

245.602-3 Screening.
Property will be screened DoD-wide, including the contracting agency, requiring agency, and, as appropriate, the General Services Administration. The requiring agency shall have priority for retention of listed items. All required screening must be completed before any sale of contractor inventory, including contractor inventory in overseas locations (foreign excess personal property) can take place. Upon request of the prospective reutilization, transfer, donation, or sales customer, the plant clearance officer shall arrange for inspection of property at the contractor's plant in such a manner as to avoid interruption of the contractor's operations, and consistent with any security requirements.
245.602-70 Plant clearance procedures. Follow the procedures at PGI 245.602-70 for establishing and processing a plant clearance case.

245.604 Sale of surplus personal property.

245.604-1 Sales procedures.

(1) Best value sales approach. Plant clearance officers shall determine a best value sales approach (formal or informal sales), to include due consideration for costs, risks, and benefits, e.g., potential sales proceeds.

(2) Informal bid procedures. The plant clearance officer may direct the contractor to issue informal invitations for bid (orally, telephonically, or by other informal media), provided—

   (i) Maximum practical competition is obtained;
   (ii) Sources solicited are recorded; and
   (iii) Informal bids are confirmed in writing.

(3) Sale approval and award. Plant clearance officers shall—

   (i) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

      (A) Knowledge or tests of the market;
      (B) Current published prices for the property;
      (C) The nature, condition, quantity, and location of the property; and
      (D) Past sale history for like or similar items;

   (ii) Approve award to the responsible bidder whose bid is most advantageous to the Government. The plant clearance officer shall not approve award to any bidder who is an ineligible transferee, as defined in 252.245-7004, Reporting, Reutilization, and Disposal; and

   (iii) Notify the contractor of the bidder to whom an award will be made within 5 working days from receipt of bids.

(4) Noncompetitive sales.

   (i) Noncompetitive sales include purchases or retention at less than cost by the contractor. Noncompetitive sales may be made when—

      (A) The plant clearance officer determines that this method is essential to expeditious plant clearance; and
      (B) The Government's interests are adequately protected.
(ii) Noncompetitive sales shall be at fair and reasonable prices, not less than those reasonably expected under competitive sales.

(iii) Conditions justifying noncompetitive sales are—

(A) No acceptable bids are received under competitive sale;

(B) Anticipated sales proceeds do not warrant competitive sale;

(C) Specialized nature of the property would not create bidder interest;

(D) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(E) Such action is essential to the Government's interests.

(5) Plant clearance officers shall consider any special disposal requirements such as demilitarization or trade security control requirements in accordance with DoDM 4160.28-M, Defense Demilitarization Manual, and DoDI 2030.08, Implementation of Trade Security Controls, respectively. See PGI 245.6.
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246.702 General.

246.702-70 Definitions.
As used in this subpart—

“Acceptance,” as used in this subpart and in the warranty clauses at FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246-18, Warranty of Supplies of a Complex Nature; FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246-20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

“Defect” means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

“Enterprise” means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

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

“Issuing agency” means an organization responsible for assigning a globally unique identifier to an enterprise, as indicated in the Register of Issuing Agency Codes for International Standards Organization/International Electrotechnical Commission 15459, located at http://www.aimglobal.org/?Reg_Authority15459.

“Serialized item” means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

“Unique item identifier” means a set of data elements marked on an item that is globally unique and unambiguous.

“Warranty tracking” means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

246.704 Authority for use of warranties.

(1) The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(i) Commercial items (see FAR 46.709);
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(ii) Technical data, unless the warranty provides for extended liability (see 246.708);

(iii) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202-4); or

(iv) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

(2) The chief of the contracting office shall approve the use of a warranty only when the benefits are expected to outweigh the cost.

246.705 Limitations.

(a) In addition to the exceptions provided in FAR 46.705(a), warranties in the clause at 252.246-7001, Warranty of Data, may be used in cost-reimbursement contracts.

246.706 Warranty terms and conditions.


246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the basic or one of the alternates of the clause at 252.246-7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7013, Rights in Technical Data and Computer Software, when there is a need for greater protection or period of liability than provided by the inspection and warranty clauses prescribed in FAR part 46.

(i) Use the basic clause in solicitations and contracts that are not firm-fixed price or fixed-price incentive.

(ii) Use alternate I in fixed-price-incentive solicitations and contracts.

(iii) Use alternate II in firm-fixed-price solicitations and contracts.

(2) Use the clause at 252.246-7002, Warranty of Construction (Germany), instead of
the clause at FAR 52.246-21, Warranty of Construction, in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

(3) When the solicitation includes the clause at 252.211-7003, Item Unique Identification and Valuation, which is prescribed in 211.274-6(a), and it is anticipated that the resulting contract will include a warranty for serialized items—

(i) Use the provision at 252.246-7005, Notice of Warranty Tracking of Serialized Items, in the solicitation if the Government does not specify a warranty and offerors will be required to enter data with the offer;

(ii) Use the clause at 252.246-7006, Warranty Tracking of Serialized Items, in the solicitation and contract; and

(iii) Include the following warranty attachments, available at https://www.pdrep.csd.disa.mil/pdrep_files/other/wwr.htm, in the solicitation and contract and see 246.710-70:

(A) Warranty Tracking Information.

(B) Source of Repair Instructions.

246.710-70 Warranty attachments.

Follow the procedures at PGI 246.710-70 regarding warranty attachments.
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SUBPART 251.2—CONTRACTOR USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS)  
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(a)(2)(A) See FAR 28.307-2(c) for policy on contractor insurance.

(B) See FAR 28.308 for policy on self-insurance.

(C) See FAR 31.205-19 for allowability of insurance costs.

(5) Paragraph (d) of the clause at 252.251-7001 satisfies the requirement of FAR 51.202(a)(5) for a written statement.

251.205 Contract clause.
Use the clause at 252.251-7001, Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.
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SUBPART 252.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES
(Revised October 29, 2021)

252.101 Using part 252.

(b) Numbering.

(2) Provisions or clauses that supplement the FAR.

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

252.103 Identification of provisions and clauses.

For guidance on numbering department or agency provisions and clauses, see PGI 252.103
252.232-7000 Advance Payment Pool.
As prescribed in 232.412-70(a), use the following clause:

ADVANCE PAYMENT POOL (APR 2020)

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

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

(c) When a letter of credit has not been issued to the Contractor in conjunction with the contract, payment will be by a dual payee Treasury check made payable to the Contractor or the disbursing office in the Advance Payment Pool Agreement and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

252.232-7001 Reserved.

252.232-7002 Progress Payments for Foreign Military Sales Acquisitions.
As prescribed in 232.502-4-70(a), use the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS
(DEC 1991)

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

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

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.); and

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and
(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232-7003  Electronic Submission of Payment Requests and Receiving Reports.
As prescribed in 232.7004(a), use the following clause:

ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (DEC 2018)

(a) Definitions. As used in this clause—

“Contract financing payment” means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

(1) Contract financing payments include—

(i) Advance payments;

(ii) Performance-based payments;

(iii) Commercial advance and interim payments;

(iv) Progress payments based on cost under the clause at Federal Acquisition Regulation (FAR) 52.232-16, Progress Payments;

(v) Progress payments based on a percentage or stage of completion (see FAR 32.102(e)), except those made under the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at FAR 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at FAR 52.232-25, Prompt Payment, is used.

(2) Contract financing payments do not include—

(i) Invoice payments;

(ii) Payments for partial deliveries; or

(iii) Lease and rental payments.

“Electronic form” means any automated system that transmits information electronically from the initiating system to affected systems.

“Invoice payment” means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.
(1) Invoice payments include—

(i) Payments for partial deliveries that have been accepted by the Government;

(ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;

(iii) For purposes of subpart 32.9 only, all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(iv) Interim payments under a cost-reimbursement contract for services when Alternate I of the clause at 52.232-25, Prompt Payment, is used.

(2) Invoice payments do not include contract financing payments.

“Payment request” means any request for contract financing payment or invoice payment submitted by the Contractor under this contract or task or delivery order.

“Receiving report” means the data prepared in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense Federal Acquisition Regulation Supplement.

(b) Except as provided in paragraph (d) of this clause, the Contractor shall submit payment requests and receiving reports in electronic form using Wide Area WorkFlow (WAWF). The Contractor shall prepare and furnish to the Government a receiving report at the time of each delivery of supplies or services under this contract or task or delivery order.

(c) Submit payment requests and receiving reports to WAWF in one of the following electronic formats:

(1) Electronic Data Interchange.

(2) Secure File Transfer Protocol.

(3) Direct input through the WAWF website.

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

(1) The Contractor has requested permission in writing to do so, and the Contracting Officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the contract administration data section of this contract or task or delivery order;

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

(3) DoD makes payment on a contract or task or delivery order for rendered health care services using the TRICARE Encounter Data System; or

(4) The Governmentwide commercial purchase card is used as the method of payment, in which case submission of only the receiving report in WAWF is required.

(e) Information regarding WAWF is available at https://wawf.eb.mil/.

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

(End of clause)

252.232-7004 DoD Progress Payment Rates.
As prescribed in 232.502-4-70(b), use the following clause:

DOD PROGRESS PAYMENT RATES (OCT 2014)

If the Contractor is a small business concern, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), Limitations on Undefinitized Contract Actions) to 90 percent.

(End of clause)

252.232-7005 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.
As prescribed in 232.412-70(b), use the following clause:

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

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

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

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

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

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

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

(End of clause)

252.232-7006 Wide Area WorkFlow Payment Instructions.

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

WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (DEC 2018)

(a) Definitions. As used in this clause—

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

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

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

“Payment request” and “receiving report” are defined in the clause at 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

(b) Electronic invoicing. The WAWF system provides the method to electronically process vendor payment requests and receiving reports, as authorized by Defense Federal Acquisition Regulation Supplement (DFARS) 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.

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

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

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

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

(e) WAWF methods of document submission. Document submissions may be via
(f) **WAWF payment instructions.** The Contractor shall use the following information when submitting payment requests and receiving reports in WAWF for this contract or task or delivery order:

(1) **Document type.** The Contractor shall submit payment requests using the following document type(s):

(i) For cost-type line items, including labor-hour or time-and-materials, submit a cost voucher.

(ii) For fixed price line items—

(A) That require shipment of a deliverable, submit the invoice and receiving report specified by the Contracting Officer.

(Contracting Officer: Insert applicable invoice and receiving report document type(s) for fixed price line items that require shipment of a deliverable.)

(B) For services that do not require shipment of a deliverable, submit either the Invoice 2in1, which meets the requirements for the invoice and receiving report, or the applicable invoice and receiving report, as specified by the Contracting Officer.

(Contracting Officer: Insert either “Invoice 2in1” or the applicable invoice and receiving report document type(s) for fixed price line items for services.)

(iii) For customary progress payments based on costs incurred, submit a progress payment request.

(iv) For performance based payments, submit a performance based payment request.

(v) For commercial item financing, submit a commercial item financing request.

(2) Fast Pay requests are only permitted when Federal Acquisition Regulation (FAR) 52.213-1 is included in the contract.

[Note: The Contractor may use a WAWF “combo” document type to create some combinations of invoice and receiving report in one step.]

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

<table>
<thead>
<tr>
<th>Field Name in WAWF</th>
<th>Data to be entered in WAWF</th>
</tr>
</thead>
</table>

1998 EDITION 252.232-6
(4) Payment request. The Contractor shall ensure a payment request includes documentation appropriate to the type of payment request in accordance with the payment clause, contract financing clause, or Federal Acquisition Regulation 52.216-7, Allowable Cost and Payment, as applicable.

(5) Receiving report. The Contractor shall ensure a receiving report meets the requirements of DFARS Appendix F.

(g) WAWF point of contact.

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

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

(2) Contact the WAWF helpdesk at 866-618-5988, if assistance is needed.

(End of clause)

As prescribed in 232.706-70, use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (APR 2014)

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

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

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

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

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$________</td>
<td>(month) (day), (year)</td>
</tr>
<tr>
<td>$________</td>
<td>(month) (day), (year)</td>
</tr>
<tr>
<td>$________</td>
<td>(month) (day), (year)</td>
</tr>
</tbody>
</table>

(End of clause)

252.232-7008 Assignment of Claims (Overseas).
As prescribed in 232.806(a)(1), use the following clause:

ASSIGNMENT OF CLAIMS (OVERSEAS) (JUN 1997)

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

(1) Approved in writing by the Contracting Officer;

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

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

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

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

(1) Identify the assignee by name and complete address; and
(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card.
As prescribed in 232.1110, use the following clause:

MANDATORY PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAY 2018)

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below the micro-purchase threshold in part 202 of the Defense Federal Acquisition Regulation Supplement, under this contract or agreement.

(End of clause)

252.232-7010 Levies on Contract Payments.
As prescribed in 232.7102, use the following clause:

LEVIES ON CONTRACT PAYMENTS (DEC 2006)

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

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

(1) The total dollar amount of the levy;

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

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

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

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

(2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or
(ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

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

(End of clause)

As prescribed in 232.908, use the following clause:

PAYMENTS IN SUPPORT OF EMERGENCIES AND CONTINGENCY OPERATIONS (MAY 2013)

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

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

(c) Invoice payments.

(1) Due date.

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

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

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

(i) Name and address of the Contractor.

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

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

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

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

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

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

(ix) Electronic funds transfer banking information.

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

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

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

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

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

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

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

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

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
(B) Affected contract number and delivery order number, if applicable;

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

(D) Contractor point of contact; and

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

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

(End of clause)

As prescribed in 232.1005-70(a)(1), use the following clause:

PERFORMANCE-BASED PAYMENTS—WHOLE-CONTRACT BASIS (APR 2020)

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

(b) In accordance with 10 U.S.C. 2307(b)(4)(A), the Contractor’s financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232-32, submit information for all payment requests using the following format:

<table>
<thead>
<tr>
<th>Current performance-based payment(s) event(s) addressed by this request:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor shall identify—</td>
</tr>
<tr>
<td>(1a) Negotiated value of all previously completed performance-based payment(s) event(s);</td>
</tr>
<tr>
<td>(1b) Negotiated value of the current performance-based payment(s) event(s);</td>
</tr>
<tr>
<td>(1c) Cumulative negotiated value of performance-based payment(s) events completed to date (1a) + (1b); and</td>
</tr>
<tr>
<td>(2) Total costs incurred to date.</td>
</tr>
</tbody>
</table>

(2) Incurred cost is determined by the Contractor’s accounting books and records, to which the Contractor shall provide access upon request of the Contracting
Officer. An acceptable accounting system in accordance with DFARS 252.242-7006 is not required for reporting of incurred costs under this clause. If the Contractor’s accounting system is not capable of tracking costs on a job order basis, the Contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with the Contractor’s accounting system. FAR 52.232-32(m) does not require certification of incurred costs.

(d) Security for financing.

(1) Title to the property described in paragraph (f) of the clause at FAR 52.232-32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor’s accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202-4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232-32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(End of clause)
PERFORMANCE-BASED PAYMENTS-DELIVERABLE-ITEM BASIS (APR 2020)

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

(b) In accordance with 10 U.S.C. 2307(b)(4)(A), the Contractor’s financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232-32, submit information for all payment requests using the following format:

<table>
<thead>
<tr>
<th>Contractor performance-based payment(s) event(s) addressed by this request:</th>
<th>Amount</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1a) Negotiated value of all previously completed performance-based payment(s) event(s);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1b) Negotiated value of the current performance-based payment(s) event(s);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1c) Cumulative negotiated value of performance-based payment(s) event(s) completed to date (1a) + (1b); and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Total costs incurred to date.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(2) Incurred cost is determined by the Contractor’s accounting books and records, to which the Contractor shall provide access upon request of the Contracting Officer. An acceptable accounting system in accordance with DFARS 252.242-7006 is not required for reporting of incurred costs under this clause. If the Contractor’s accounting system is not capable of tracking costs on a job order basis, the Contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with the Contractor’s accounting system. FAR 52.232-32(m) does not require certification of incurred costs.

(d) Security for financing.

(1) Title to the property described in paragraph (f) of the clause at FAR 52.232-32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor’s accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute
adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202-4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232-32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(End of clause)

252.232-7014 Notification of Payment in Local Currency (Afghanistan).
As prescribed in 232.7202, use the following provision:

NOTIFICATION OF PAYMENT IN LOCAL CURRENCY
(AFghanistan) (SEP 2014)

(a) The contract resulting from this solicitation will be paid in Afghani (local currency) if the contract is awarded to a host nation vendor (Afghan), pursuant to the authority of USCENTCOM Fragmentary Order (FRAGO) 09-1567 and FRAGO 10-143. Contract payment will be made in Afghani (local currency) via electronic funds transfer (EFT) to a local (Afghan) banking institution, unless an exception in paragraph (c) applies. Contracts shall not be awarded to host nation vendors who do not bank locally. If award is made to other than a host nation vendor, the contract will be awarded in U.S. dollars.

(b) Vendors shall submit quotations and offers in U.S. dollars. If the contract is awarded to an Afghan vendor, the quotation or offer will be converted to Afghani using a Government budget rate of [Insert current budget rate here.] Afghani per U.S. dollar.
(c) By exception, the following forms of payment are acceptable, in the following order of priority, when the local finance office determines that EFT using ITS.gov is not available:

(1) EFT using Limited Depository Account (LDA).

(2) Check from the local finance office LDA.

(3) Local currency cash payments in Afghani (must be approved in writing by the local finance office and contracting office prior to contract award). Payments in cash are restricted to contracts when—

   (i) The vendor provides proof via a letter from the host nation banking institution that it is not EFT capable; and

   (ii) The local finance office validates that the vendor’s banking institution is not EFT capable. Cash payments will be made in Afghani.

(End of provision)

252.232-7015 Performance-Based Payments—Representation.
As prescribed in 232.1005-70(b), use the following provision:

PERFORMANCE-BASED PAYMENTS—REPRESENTATION (APR 2020)

(a) In accordance with 10 U.S.C. 2307(b)(4)(A), the Contractor's financial statements shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(b) The Offeror represents that its financial statements are [ ] are not [ ] in compliance with Generally Accepted Accounting Principles.

(End of provision)

252.232-7016 Notice of Progress Payments or Performance-Based Payments
As prescribed in 232.1005-70(c), insert the following provision:

NOTICE OF PROGRESS PAYMENTS OR PERFORMANCE-BASED PAYMENTS (APR 2020)

(a) The need for customary progress payments in accordance with subpart 32.5 of the Federal Acquisition Regulation (FAR) or performance-based payments in accordance with FAR subpart 32.10 will not be considered as a handicap or adverse factor in the award of the contract.

(b) This solicitation includes a FAR and Defense Federal Acquisition Regulation Supplement (DFARS) clause for performance-based payments and a FAR clause for progress payments. The resultant contract will include either performance-based payments or progress payments, not both, except as may be authorized on separate orders subject to FAR 32.1003(c).
(1) The performance-based payments clauses will be included in the contract if—

(i) The Offeror has provided positive representation in response to DFARS 252.232-7015, Performance-Based Payments—Representation;

(ii) The Offeror proposes a performance-based payment arrangement in accordance with FAR 52.232-28, Invitation to Propose Performance-Based Payments, including proposed events and timing, event completion criteria, event values, and expected expenditure profile; and

(iii) The Offeror and the Government reach agreement on all aspects of the arrangement.

(2) If performance-based payments clauses are not included in the resultant contract, the progress payments clause included in this solicitation will be included in any resultant contract, modified or altered if necessary in accordance with FAR 52.232-16 and its Alternate I. Even though the progress payments clause is included in the contract, the clause shall be inoperative during any time the contractor’s accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)

252.232-7017 Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration.
As prescribed in 232.009-2, use the following clause:

ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS—PROHIBITION ON FEES AND CONSIDERATION (APR 2020)

(a) Definition. “Accelerated payment,” as used in this clause, means a payment made to a small business subcontractor as quickly as possible, with a goal of 15 days or less after receipt of payment from the Government or receipt of a proper invoice from the subcontractor, whichever is later.

(b) In accordance with section 852 of Public Law 115-232, the Contractor shall not require any further consideration from or charge fees to the small business subcontractor when making accelerated payments, as defined in paragraph (a) of this clause, to subcontractors under the clause at FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors.

(c) Subcontracts. Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including those for the acquisition of commercial items.

(End of clause)