

**FAR/DFARS FLOWDOWN PROVISIONS FOR FIXED PRICE PURCHASE ORDERS  
FOR NONCOMMERCIAL ITEMS UNDER A UNITED STATES GOVERNMENT  
CONTRACT ESA-FFP-USG2, Revision March 2022**

In addition to the clauses of General Provisions, the following provisions shall apply to the Order as required by the terms of Buyer's Government Contract, by operation of law or regulation, or by the terms of the specific clauses. Buyer is flowing down to Seller certain provisions and clauses from the Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) (all herein "USG Clauses").

The Federal Acquisition Regulation (FAR) and Department of Defense (DOD) FAR Supplement (DFARS) clauses provided in this document are incorporated by reference, modified as indicated, with the same force and effect as if provided in full text. The following words in the FAR and DFARS clauses are to be understood as follows, except (a) in those clauses where the terms should retain their original meaning due to authority vested in the U.S. Government, in which case Buyer retains such rights as are needed to perform this clause under its contract with Buyer's Customer and (b) where the context reasonably requires otherwise:

- "Contract" is the contract between Buyer and Seller as defined in the General Provisions incorporated by reference into the Purchase Order issued by Buyer.
- "Contractor" and "Offeror" mean Seller.
- "Subcontractor" means Seller's subcontractors.
- "Government" usually means Buyer, but can also mean both the Government and/or Buyer when the context reasonable requires that constructions (e.g., the right to inspect).
- "Contracting Officer" means Buyer's Authorized Representative, except for those specific clauses where the context refers to rights, acts authorizations or obligations that are uniquely performed or granted by the U.S. Government.

The listed clauses that are not applicable due to monetary threshold, place, performance, type of effort or contract shall be treated as self-deleting.

These clauses do not establish privity between Seller and Buyer's Customer. Notwithstanding any provision to the contrary, Seller shall have no right to pursue a claim or any other relief directly against the U.S. Government. The Contract Disputes Act shall not be applicable to the Contract. Any reference to a "Disputes" clause shall mean the Disputes clause of the Contract as set forth in the General Provisions. Any communication or notification required under these clauses to or from Seller to or from the Buyer's Customer shall be made through Buyer.

If the contract between Buyer and Buyer's Customer incorporates a preceding version of any such clause, that version shall apply to this Contract. Buyer will provide the applicable dates upon receipt of a written request from Seller.

Seller shall indemnify and hold Buyer harmless from and against any price reduction in Buyer's Government Contract, as well as Buyer's reasonable attorney fees and other direct costs to defend Government Contract claims when said reduction is attributable to the failure of Seller or Seller's subcontractors to properly discharge applicable duties under the Truth in Negotiation Act and Cost Accounting Standards clauses incorporated by reference in accordance with this provision.

If Seller is an international contractor, clauses marked with an asterisk (\*) apply to this Contract only if work under the Contract will be performed in the United States or Seller is recruiting employees in the United States to work on the Contract.

**A. PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If Buyer furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information which the U. S. Government owns or has the right to authorize the use of (“Government Furnished Items”), nothing herein shall be construed to mean that Buyer, acting on its own behalf, may modify or limit any rights the Government may have to authorize Seller’s use of such Government Furnished Items in support of other U. S. Government prime contracts.

**B. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) INCORPORATED BY REFERENCE**

The following FAR clauses apply to this Contract:

FAR Reference	Title
52.202-1	DEFINITIONS (JUNE 2020)
52.203-3	GRATUITIES (APR 1984)
52.203-19	PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (*)
52.222-26	EQUAL OPPORTUNITY (SEP 2016) (*)
52.222-50	COMBATING TRAFFICKING IN PERSONS (NOV 2021)
52.223-6	DRUG-FREE WORKPLACE (MAY 2001)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)
52.227-3	PATENT INDEMNITY (APR 1984)
52.236-13	ACCIDENT PREVENTION (NOV 1991)
52.242-13	BANKRUPTCY (JUL 1995)
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2022)

The following FAR clauses apply to this Contract subject to the parenthetical notes:

52.204-2	SECURITY REQUIREMENTS (MARCH 2021) (Applies if the work requires access to classified information.)
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (Applies where SELLER will have physical access to a federally-controlled facility or access to a Federal information system.)
52.204-21	BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021) (Applies where SELLER has “Federal contract information” residing in or transiting through its information system).
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008) (Applies if a rating is listed on the cover page of this Contract)
52.215-12	SUBCONTRACTOR COST OR PRICING DATA (JUNE 2020) (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
52.215-13	SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (JUNE 2020) (Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) (Applies if this Contract meets the applicability requirements of FAR 15.408(g))

- 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003)  
(Applies only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and SELLER proposed facilities capital cost of money in its offer.)
- 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)  
(Applies only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and SELLER did not propose facilities capital cost of money in its offer.)
- 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)  
(Applicable if this Contract meets the applicability requirements of FAR 15.408(j).)
- 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)  
(Applies if this Contract meets the applicability requirements of FAR 15.408(k).)
- 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018) (\*)  
(Applies if SELLER is an other-than-small business concern and Purchase Contract/Subcontract will offer further lower-tier subcontracting opportunities)
- 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (MARCH 2018) (\*)  
(Applies if the work requires or involves the employment of laborers or mechanics.)
- 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018) (\*)  
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.222-51 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT-REQUIREMENTS (MAY 2014)  
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.222-53 EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES-REQUIREMENTS (MAY 2014)  
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (JAN 2022)  
(Applies if this Contract is for services subject to the Service Contract Act.)
- 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)  
(Applies to work containing covered radioactive material. In the blank at paragraph (a) insert "30".)
- 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 2016)  
(Applies if the work was manufactured with or contains ozone-depleting substances.)
- 52.225-1 BUY AMERICAN ACT – SUPPLIES (NOV 2021)  
(Applies if the work contains other than domestic components, and is performed for a non-DOD prime contract.)
- 52.225-2 BUY AMERICAN CERTIFICATE (FEB 2021)  
(Applies on an annual basis for acquisitions exceeding the micro-purchase threshold.)
- 52.225-5 TRADE AGREEMENTS (OCT 2019)  
(Applies if the work contains other than U.S. made or designated country end products as specified in the clause, and is for a non-DOD prime contract.)
- 52.225-8 DUTY-FREE ENTRY (OCT 2010)  
(Applies if work will be imported into the Customs Territory of the United States for a non-DOD prime contract.)
- 52.227-9 REFUND OF ROYALTIES (APR 1984)  
(Applies if work involves reported royalties in excess of \$250.)
- 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (DEC 2007)  
(Applies if the work or any patent application may cover classified subject matter.)
- 52.227-11 PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR (MAY 2014)

- (Applies if this Contract includes, at any tier, experimental, developmental, or research work and SELLER is a small business concern or domestic nonprofit organization. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the Buyer's Procurement Representative. FAR 52.227-13 applies in lieu of this clause if SELLER is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.)
- 52.227-13 PATENT RIGHTS - OWNERSHIP BY THE GOVERNMENT (DEC 2007)  
(Applies if this Contract is for experimental, developmental or research work and SELLER is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government. Paragraph (g) is deleted. If not otherwise included in this Contract, the name and address of the contracting officer may be obtained from Buyer's Procurement Representative.)
- 52.227-14 RIGHTS IN DATA – GENERAL (MAY 2014)  
(Applies where work supports non-DOD prime contract)
- 52.227-19 COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007)  
(Applies where SELLER is providing commercial computer software to be delivered to the Government).
- 52.228-3 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) (JUL 2014)  
(Applies if Contract is subject to the Defense Base Act)
- 52.228-4 WORKERS COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984)  
(Applies if Contract is subject to the War Hazards Compensation Act)
- 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (NOV 2021)  
(Applies if SELLER is a small business concern. This clause does not apply if Buyer does not receive accelerated payments under the prime contract. Not all agencies provide accelerated payments.)
- 52.234-1 INDUSTRIAL RESOURCES DEVELOPED UNDER TITLE III, DEFENSE PRODUCTION ACT (SEP 2016)  
(Applies if Title III industrial resources are developed under the Buyer's prime contract)
- 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984)  
(Applies if work is performed on a Government installation.)
- 52.245-1 GOVERNMENT PROPERTY (ALTERNATE I) (SEP 2021)  
(The following is added as paragraph (n) "SELLER shall provide to Buyer immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with Seller, or (ii) makes a determination that SELLER's property management practices are inadequate, and/or present an undue risk, or that SELLER has failed to take corrective action when required.")
- 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUNE 2003)  
(Applies when air transport of either supplies or personnel will be involved.)
- 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (NOV 2021)  
(Applies when ocean transport of either supplies or personnel will be involved.)

The following FAR clauses apply if this Contract exceeds \$3,500

- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (NOV 2021) (\*)  
(Applies except for commercial services that are part of the purchase of a commercial-off-the-shelf ("COTS") item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item.)

52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUNE 2020)

The following FAR clauses apply if this Contract exceeds \$10,000

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (\*)

The following FAR clauses apply if this Contract exceeds \$15,000

52.222-20 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (JUNE 2020)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 2020) (\*)

The following FAR clauses apply if this Contract exceeds \$30,000

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUNE 2020)  
(SELLER shall report required executive compensation by posting the information to the System for Award Management (“SAM”) at [www.sam.gov](http://www.sam.gov). All information posted will be available to the general public.)

The following FAR clauses apply if this Contract exceeds \$35,000

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021) (Applies unless this Contract is for COTS items. Any notices required by SELLER under this clause shall be provided to Buyer.) See section E (4) for further instruction.

The following FAR clauses apply if this Contract exceeds \$150,000

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUNE 2020)

52.203-7 ANTI-KICKBACK PROCEDURES (JUNE 2020)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUNE 2020)

52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JUNE 2020)

52.215-2 AUDIT AND RECORDS – NEGOTIATION (JUNE 2020)  
(Applies if Buyer notifies SELLER that it must submit certified cost or pricing data)

52.215-14 INTEGRITY OF UNIT PRICES (NOV 2021)

52.215-23 LIMITATION ON PASS-THROUGH CHARGES (JUNE 2020)

(ALT I applies if in Buyer’s Government Contract)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (JUNE 2020)

52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUNE 2020) (\*)

52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUNE 2020) (\*)

52.227-1 AUTHORIZATION AND CONSENT (JUNE 2020)

52.248-1 VALUE ENGINEERING (JUNE 2020)

The following FAR clauses apply if this Contract exceeds \$700,000

- 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (SEP 2021) (Does not apply if SELLER is a small business concern)

The following FAR clauses apply if this Contract exceeds \$750,000

- 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2021) (Does not apply if SELLER is a small business concern)
- 52.214-26 AUDIT AND RECORDS- SEALED BIDDING (JUNE 2020)
- 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (NOV 2021)
- 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (NOV 2021)
- 52.230-2 COST ACCOUNTING STANDARDS (JUNE 2020)  
(Applies only when referenced in this Contract that full CAS coverage applies. Delete paragraph (b) of the clause.)
- 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUNE 2020)  
(Applies only when referenced in this Contract that modified CAS coverage applies. Delete paragraph (b) of the clause.)
- 52.230-4 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES – FOREIGN CONCERNS (JUNE 2020)  
(Applies if Vendor is a foreign concern subject to Cost Accounting Standards)
- 52.230-5 COST ACCOUNTING STANDARDS -- EDUCATIONAL INSTITUTIONS (JUNE 2020)  
(Applies only when referenced in this Contract that this CAS clause applies. Delete paragraph (b) of the clause.)
- 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)  
(Applies if FAR 52.230-2, FAR 52.230-3, FAR 52.230-4 or FAR 52.230-5 applies.)

The following FAR clauses apply if this Contract exceeds \$5,500,000

- 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021)  
(Applies if this Contract if the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)
- 52.203-14 DISPLAY OF HOTLINE POSTER(S) (NOV 2021)  
(Applies is work is for a non-DOD prime contract)

**C. PROVISIONS OF THE DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) INCORPORATED BY REFERENCE**

The following DFARS clauses apply to this Contract if Buyer’s prime contract is with the Department of Defense, subject to the parenthetical notes below:

DFARS Reference	Title
252.203-7002	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)
252.204-7000	DISCLOSURE OF INFORMATION (OCT 2016) (SELLER shall submit all required requests through Buyer)

252.204-7012	SAFEGUARDING OF UNCLASSIFIED CONTROLLED TECHNICAL INFORMATION (DEC 2019) (Reports required under this clause shall be made through Buyer within 72 hours of discovery of any cyber incident).
252.204-7009	LIMITATIONS ON THE USE OR DISCLOSURE OF THIRD-PARTY CONTACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016)
252.204-7015	DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT CONTRACTORS (MAY 2016)
252.208-7000	INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991) (Applies if Contract requires items containing precious metals)
252.211-7003	ITEM IDENTIFICATION AND VALUATION (MARCH 2016) (Applies if this Contract requires the work to contain unique item identification. All reports required to be submitted under this clause shall be submitted to Buyer at a location to be provided; delete paragraph (g) and insert the following in lieu thereof: "(g) Lower-Tier Subcontracts. SELLER shall include this clause, including this paragraph (g), in all lower tier subcontracts issued under this Subcontract for the acquisition of components identified herein as requiring UID.)
252.211-7007	REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012) (Applies if SELLER is in possession of government-furnished property in support of this Contract.)
252.222-7006	RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010) (Certification pursuant to paragraph (b)(2) applies to both SELLER in its own capacity and to SELLER's covered subcontractors.)
252.223-7001	HAZARD WARNING LABELS (DEC 1991) (Applies if this Contract requires the delivery of hazardous materials.)
252.223-7002	SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994) (Applies only if the articles furnished under this Contract contain ammunition or explosives, including liquid and solid propellants.)
252.223-7003	CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES (DEC 1991) (Applies if 252.223-7002 applies to this Contract.)
252.223-7007	SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999) (Applies if this Contract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to SELLER as Government Furnished Property.)
252.223-7008	PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013)
252.225-7001	BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (DEC 2017) (Applies if the work contains other than domestic components.)
252.225-7007	PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018) (Applies if SELLER is supplying items on the U.S. Munitions list.)

252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (DEC 2019) (Applies if the work to be furnished contains specialty metals.)
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)
252.225-7013	DUTY-FREE ENTRY (APRIL 2020) (Applies if Contract requires import of Qualifying country components or nonqualifying country components which exceed \$200 per unit).
252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 2011) (Applies if work supplied under this Contract contains ball or roller bearings.)
252.225-7021	TRADE AGREEMENTS (SEPT 2019) (Applies if the work contains other than U.S.-made, qualifying country, or designated country end products.)
252.225-7028	EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (APR 2003)
252.225-7033	WAIVER OF UNITED KINGDOM LEVIES (APR 2003) (Applies if SELLER anticipates awarding a lower-tier subcontract in excess of \$1,000,000 with a United Kingdom firm.)
252.225-7043	ANTI-TERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUL 2015) (Applies where SELLER will be performing or traveling outside the U.S. under this Contract.)
252.225-7048	EXPORT-CONTROLLED ITEMS (JUNE 2013)
252.227-7013	RIGHTS IN TECHNICAL DATA - NON-COMMERCIAL ITEMS (FEB 2014) (Applies to the extent specified in DFARS 252.227-7015.)
252.227-7014	RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014)
252.227-7015	TECHNICAL DATA - COMMERCIAL ITEMS (FEB 2014)
252.227-7016	RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011) (SELLER must flow down this clause to all lower-tier subcontractors.)
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (SEP 2016)
252.227-7025	LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAY 2013)
252.227-7026	DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)
252.227-7028	TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)
252.227-7038	PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012) (Applies if (1) SELLER is not small business or nonprofit organization subject to FAR 52.227-11, and (2) the Contract is for experimental, developmental, or research work.)
252.228-7005	MISHAP REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (NOV 2019)
252.231-7000	SUPPLEMENTAL COST PRINCIPLES (DEC 1991)
252.235-7003	FREQUENCY AUTHORIZATION (MAY 2014) (Applies if work requires developing, producing, constructing, testing, or operating a device requiring a frequency authorization.)



252.239-7018	SUPPLY CHAIN RISK (FEB 2019) (Applies if the work involves the development or delivery of any information technology, whether acquired as a service or as a supply.)
252.245-7001	TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012) (Applies if work requires government-furnished property.)
252.245-7002	REPORTING LOSS OF GOVERNMENT PROPERTY (JAN 2021) (Applies if work requires government-furnished property.)
252.245-7003	CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012) (Applies if work requires government-furnished property.)
252.245-7004	REPORTING, REUTILIZATION, AND DISPOSAL (DEC 2017) (Applies if work requires government-furnished property.)
252.246-7003	NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. Contractor shall provide notifications to Buyer and the contracting officer identified to SELLER.)
252.246-7007	CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION and AVOIDANCE SYSTEM (AUG 2016)
252.246-7008	SOURCES OF ELECTRONIC PARTS (MAY 2018) (Applies when SELLER is providing electronic parts or assemblies containing electronic parts, unless SELLER is the original manufacturer).
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA (FEB 2019) (Applies in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below \$150,000.)

The following DFARS clauses apply if this Contract exceeds \$150,000

252.203-7001	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (DEC 2008) (In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer not the Government.)
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The following DFARS clause applies if this Contract exceeds \$500,000

252.226-7001	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (APRIL 2019) (Buyer shall have no liability to Seller for any incentive payment under this clause unless and until the Government provides said incentive payment to Buyer)
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The following DFARS clauses apply if this Contract exceeds \$700,000

252.249-7002	NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (JUNE 2020)
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The following DFARS clauses apply if this Contract exceeds \$750,000

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| 252.219-7003 | SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (DEC 2019)<br>(Applies if FAR 52.219-9 applies to this Contract.)  |
| 252.219-7004 | SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (MAY 2019)<br>(Applies if SELLER is participating in the DoD Small Business Subcontracting Test Program.) |

The following DFARS clauses apply if this Contract exceeds \$5,500,000

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| 252.203-7004 | DISPLAY OF FRAUD HOTLINE POSTER(S) (AUG 2019) |
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#### **E. CERTIFICATIONS AND REPRESENTATIONS**

SELLER acknowledges that Buyer will rely upon SELLER certifications and representations contained in this clause (below) and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to SELLER. By entering into such contract, SELLER republishes the certifications and representations submitted with its written offer, including company profile information and oral offers/quotations, and additionally SELLER makes the certifications and representations set forth below. SELLER shall immediately notify Buyer of any change of status regarding any certification or representation.

##### **1. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (SEP 2007)**

(Applies if this Contract exceeds \$150,000)

(a) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12). (b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. SELLER hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract. (d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, SELLER shall complete and submit, with its offer to Buyer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. SELLER need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

##### **2. FAR 52.203-18 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation (JAN 2017).**

(a) *Definition.*

“Internal confidentiality agreement or statement,” “subcontract”, and “subcontractor”, as used in this provision, are defined in the clause at 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

(b) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use funds appropriated (or otherwise made available) for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(c) The prohibition in paragraph (b) of this provision does not contravene requirements applicable to

Standard Form 312, (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d) *Representation.* By submission of its offer, the SELLER represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

**3. FAR 52.209-5 Certification Regarding Responsibility Matters (AUG 2020)**

(a)(1) SELLER certifies, to the best of its knowledge and belief, that--

(i) SELLER and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and (D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$10,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

- (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
  - (ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to 12 further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
  - (iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
  - (iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).
- (ii) SELLER has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).
- (b) SELLER shall provide immediate written notice to Elbit Systems of America if, at any time prior to contract award, SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that SELLER knowingly rendered an erroneous certification, in addition to other remedies available, Elbit Systems of America may terminate this contract for default.

**4. FAR 52.209-6 (c) PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021)**

Requires an “as of time of award debarment disclosure” for procurements above \$35,000 (for the 2015 thru current version of the clause) unless acquiring COTS items as defined in FAR 2.101. Recommendation is to include the below disclosure and certification language in all subcontract/order/bilateral modification templates and ensuring the supplier signs (and dates) the award and returns it to Elbit which is then retained to the procurement file to demonstrate compliance with these two requirements.

ESA requires the supplier to sign the following statement on the Purchase Order or relevant document and return to ESA Buyer when applicable:

“Any representations and certifications submitted resulting in award of this Subcontract are hereby incorporated either in full text or by reference, and any updated representations and certifications submitted thereafter are incorporated by reference and made a part of this Subcontract with the same force and effect

as if they were incorporated by full text. By signing this Subcontract, the Subcontractor hereby certifies and discloses that as of the time of award of this Subcontract: (1) the Subcontractor, or its principals, is not debarred, suspended or proposed for debarment or declared ineligible for award by any Federal agency; (2) no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with awarding the contract or this Subcontract; and (3) no changes have occurred to any other representations and certifications made by the Subcontractor resulting in award of this subcontract. The Subcontractor agrees to promptly notify the Elbit Buyer of any changes occurring at any time during performance of this Subcontract to any representations and certifications submitted by the Subcontractor.”

**4. FAR 52.222-22 Previous Contracts and Compliance Reports (FEB 1999)**

(a) SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (a) SELLER has filed all required compliance reports and (b) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**5. FAR 52.222-25 Affirmative Action Compliance (APR 1984)**

(a) SELLER represents: (a) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

- If (b) that in the event such a program does not presently exist, SELLER will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.