

Revision No. 0, dated March 1, 2023

Flowdown Attachment

RIS FDA-2023.0129

Contract No.: APS-22-08

Prime Contract No.: N66001-20-C-4005

DPAS Rating: None

If the Purchase Order on date of award is valued at or above the threshold specified in FAR 19.702(a), located at <https://www.acquisition.gov/far/19.702>, and is not for commercial items, the following applies:

In order to meet the requirements of FAR 52.219-9 or DFARS 252.219-7004, the Seller agrees to provide a Small Business Subcontracting Plan prior to the award of a Purchase Order. The referenced plan should contain goals for subcontracting with small businesses, small disadvantaged businesses, woman-owned small business, historically under-utilized small business, veteran owned and service disabled veteran owned businesses in accordance with the plan requirements outlined in FAR 52.219-9 or DFARS 252.219-7004.

In addition, the Seller must submit an Individual Subcontracting Report (ISR) via the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>) on a semi-annual basis for reporting periods ending on March 31st and September 30th. Reports are due no later than 30 days after the close of each reporting period.

Email for Seller's official acknowledging or rejecting the ISR: ris.esrs@raytheon.com
(Seller must include contractor official on the ISR report email notification)

The following customer contract requirements apply to this Order or Purchase Order to the extent indicated below and are hereby incorporated into the Order or Purchase Order by full text or by reference with the same force and effect as if they were given in full text. Upon Supplier's or Seller's request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR or DFARS provision or clause may be accessed electronically at these addresses: <https://www.acquisition.gov/dfars/part-252-solicitation-provisions-and-contract-clauses> or <https://www.acquisition.gov/far/>:

Whenever necessary to make the context of the Clauses applicable to the Order or Purchase Order, the term "Contractor" or "Offeror" shall mean "Supplier" or "Seller", "Subcontractor" shall mean "Seller's Subcontractor", the term "Contract" shall mean the Order or Purchase Order, and the term "Government", "Contracting Officer" and equivalent phrases shall mean Buyer, except the terms "Government" and "Contracting Officer" do not change: (a) in the phrases, "Government Property", "Government-Furnished Property", and "Government-Owned Property", (b) in the patent Clauses if incorporated herein, (c) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Contracting Officer or a duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2, (d) when title to property is to be transferred directly to the Government, (e) when access to Proprietary Information is required, except as specifically otherwise provided herein, and (f) where specifically modified herein. Supplier or Seller shall incorporate into each lower-tier subcontract placed in support of the Order or Purchase Order all applicable Clauses in accordance with the flowdown requirements specified in each such Clause. If any of the following clauses do not apply to this Order or Purchase Order, such clauses are considered to be self-deleting.

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SPECIAL CONTRACT REQUIREMENTS:

19. ASSIGNMENTS AND SUBCONTRACTS

(Applicable to all Orders.)

This Subcontract is not assignable and shall not be assigned by Subcontractor without the prior written consent of Contractor which shall not be unreasonably withheld. Further, Subcontractor agrees to obtain Contractor's approval before subcontracting this order or any portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials.

2. RIGHTS IN MASK WORKS

(Applicable to Orders in which mask work is likely to be created in the performance of the work.)

(a) Definitions,

As defined in 17 U.S.C. §901—

“Semiconductor chip product” is the final or intermediate form of any product—

- (1) Having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise place on or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and
- (2) Intended to perform electronic circuit functions.

“Mask Work” is a series of related images, however fixed or encoded—

- (1) Having, or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and
- (2) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

(b) For any and every mask work generated in the performance of work under this contract, the contractor grants to the Government a non-exclusive, irrevocable, royalty free, worldwide license to”

- (1) Reproduce or have reproduced the mask work by optical, electronic, or any other means; and
- (2) Import or distribute or have imported or distributed a semiconductor chip product in which the mask work is embodied.

(c) The contractor shall include this test, suitably modified to replace “contractor” with “subcontractor” in all subcontracts, regardless of tier, in which a mask work is likely to be created in the performance of the work under the subcontract. The contractor shall not obtain rights in the subcontractor’s mask works as any part of the consideration for awarding the subcontract.

(d) This license is specific to mask work rights and shall not be construed to broaden any proprietary rights to technical data or computer software.

FAR AND DFARS CLAUSES INCORPORATED BY REFERENCE:

Clause Number	Title	Applicability (Reference to “Purchase Orders” includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements
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			C	NC
52.203-6	Restrictions on Subcontractor Sales to the Government (Sep 2006)	Applicable to all Orders over the Simplified Acquisition Threshold.		X
52.203-7	Anti-Kickback Procedures (May 2014)	Applicable to all Orders that exceed \$150,000, excepting paragraph (c)(1)).	X	X
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)	Applicable to all Orders exceeding \$150,000.	X	X
52.204-2	Security Requirements (Aug 1996)	Applicable to all Orders that involve access to classified information. Any reference to the Changes clause is excluded.	X	X
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018)	Applicable to all Orders when the Buyer is the Prime Contractor and the Order exceeds \$30,000. Substitution of the parties is not applicable to this clause. Seller shall report to Buyer the information required under the clause.	X	X
52.204-14	Service Contract Reporting Requirements (Oct 2016)	Applicable to all Orders when Seller is a first-tier subcontractor providing services when the Order is at or above the thresholds in FAR 4.1703(a)(2) so that Buyer can get required information from Seller for reporting by Buyer to Buyer's customer. Seller's information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.	X	X
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6.	X	X
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2019)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6.	X	X
52.209-6	Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)	Applicable to all Orders exceeding \$35,000, except for Orders for commercially available off-the-shelf items.	X	X
52.215-2	Audit and Records –	Applicable to the following Orders that	X	X

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Clause Number	Title	Applicability (Reference to "Purchase Orders" includes underlying Solicitations)	Applies to Commercial (C) and/or Non-Commercial (NC) procurements	
			C	NC
	Negotiation (Oct 2010)	exceed the Simplified Acquisition Threshold: (i) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these, (ii) for which certified cost or pricing data are required; or (iii) that require Seller to furnish reports as discussed in paragraph (e) of the clause.		
52.215-23	Limitations on Pass-Through Charges (Oct 2009)	Applicable to all cost-reimbursement Orders that exceed the Simplified Acquisition Threshold; except if the Buyers' prime contract is with the DoD, then applicable to all cost-reimbursement Orders and all fixed-price Orders, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.	X	X
52.219-9	Small Business Subcontracting Plan (Jun 2020)	Applicable to Orders that are expected to exceed the threshold identified in FAR 19.702(a) on the date of subcontract/Order award (except to small business concerns) and to Orders to the extent that the work under the Order will be performed in the United States or its outlying areas or Seller is recruiting employees in the United States or its outlying areas to work on the Order. Not applicable to Orders for commercial items.		X
52.222-35	Equal Opportunity for Veterans (Oct 2015)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, of \$150,000 or more. Foreign Sellers: Applicable to Orders when the listing of employment openings for purposes of work to be performed under this Order occur and are filled within the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.	X	X
52.222-37	Employment Reports on	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6,	X	X

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			C	NC
	Veterans (Feb 2016)	of \$150,000 or more. Foreign Sellers: Applicable to Orders when the listing of employment openings for purposes of work to be performed under this Order occur and are filled within the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.		
52.222-50	Combating Trafficking in Persons (Jan 2019)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, except that the requirements in paragraph (h) of the clause apply only to (i) supplies that are other than commercially available off-the-shelf items that are acquired outside the United States, or for services to be performed outside the United States, and (ii) that exceed \$500,000 in value.	X	X
52.222-54	Employment Eligibility Verification (Oct 2015)	Applicable to all Orders (i) for construction or commercial or noncommercial services (except commercial services that are part of a purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS provider, and that are normally provided for that COTS item); (ii) has a value more than \$3,500; and (iii) includes work performed in the United States. Foreign Sellers: “United States” means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.	X	X
52.223-18	Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011)	Applicable to all Orders over the Micro-Purchase Threshold.	X	X
52.227-1	Authorization and Consent (Dec 2007)	Applicable to all Orders over the Simplified Acquisition Threshold.	X	X
52.227-1	Authorization and Consent (Dec 2007) - Alternate I (Apr 1984)	Applicable to all Orders over the Simplified Acquisition Threshold.	X	X

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52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)	Applicable to all Orders expected to exceed the Simplified Acquisition Threshold.	X	X
52.232-39	Unenforceability of Unauthorized Obligations (Jun 2013)	Applicable to all Orders involving EULA, TOS, or similar software agreement.	X	X
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)	Applicable to all Orders, including for Commercial Items pursuant to 52.244-6, with small business concerns, including Orders with small business concerns for the acquisition of commercial items.	X	X
52.243-2	Changes-Cost-Reimbursement (Aug 1987) - Alternate II (Apr 1984)	Applicable to cost-reimbursement Orders.	X	X
52.244-6	Subcontracts for Commercial Items (Aug 2019)	Applicable to all Orders.	X	X
52.245-1	Government Property (Jan 2017)	Applicable to all Orders when Government property is acquired or furnished (see PT-001).	X	X
252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism (May 2019)	Applicable to Orders over \$35,000.	X	X
252.209-7009	Organizational Conflict of Interest--Major Defense Acquisition Program (May 2019)	Applicable to all Orders.	X	X
252.211-7003	Item Unique Identification and Valuation (Mar 2016)	Applicable to all Orders. Seller's obligations under this clause are limited to cooperating with Buyer's efforts to comply with this clause, including granting Buyer access to Seller's deliverables at its facilities and to appropriate property records.	X	X
252.223-7004	Drug-Free Work Force (Sep 1988)	Applicable to Orders except when (i) performance or partial performance will be outside the United States and its outlying areas. (ii) the value of the		X

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			C	NC
		acquisition is at or below the Simplified Acquisition Threshold, or (iii) the Order is for Commercial Items.		
252.225-7012	Preference for Certain Domestic Commodities (Dec 2017)	Applicable to all Orders.	X	X
252.227-7037	Validation of Restrictive Markings on Technical Data (Sep 2016)	Applicable to all Orders requiring the delivery of technical data.	X	X
252.227-7039	Patents--Reporting of Subject Inventions (Apr 1990)	Applicable to all Orders for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.		X
252.235-7010	Acknowledgment of Support and Disclaimer (May 1995)	Applicable to all Orders for research and development.		X
252.237-7010	Prohibition on Interrogation of Detainees by Contractor Personnel (Jun 2013)	Applicable to all Orders that require Seller personnel to interact with detainees in the course of their duties.	X	X
252.237-7023	Continuation of Essential Contractor Services (Oct 2010)	Applicable to all Orders for essential services as defined in the clause.	X	X
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (Jun 2013)	Applicable to all Orders.	X	X
252.246-7004	Safety of Facilities, Infrastructure, and Equipment for Military (Oct 2010)	Applicable to all Orders for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.	X	X
252.246-7008	Sources of Electronic Parts (May 2018)	Applicable to all Orders for electronic parts or assemblies containing electronic parts, unless Seller is the original manufacturer.	X	X

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FAR, DFARS AND SPECIAL AGENCY CLAUSES INCORPORATED BY FULL TEXT:
52.216-7 ALLOWABLE COST AND PAYMENT (AUG 2018) ALTERNATE IV (AUG 2012)

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(Applicable to contracts with nonprofit organizations other than an educational institution, a State or local government, or a nonprofit organization exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VII. Applies to Non-Commercial procurements)

(a) Invoicing.

(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.7 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the _____ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

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(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

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(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

- (A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.
- (B) *General and Administrative expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).
- (C) *Overhead expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.
- (D) *Occupancy expenses (intermediate indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.
- (E) Claimed allocation bases, by element of cost, used to distribute indirect costs.
- (F) Facilities capital cost of money factors computation.
- (G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.
- (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
- (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
- (J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).
- (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
- (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
- (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
- (N) Certificate of final indirect costs (see [52.242-4](#), Certification of Final Indirect Costs).
- (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

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(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, *etc.*).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

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(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

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(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

52.244-2 SUBCONTRACTS (OCT 2010)

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(Paragraphs (g) and (h) of the clause are applicable to all Purchase Orders. Applies to Commercial and Non-Commercial procurements.)

- (a) Definitions. As used in this clause— Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR). Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular sub-contract. Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a sub-contractor to furnish supplies or services for performance of the prime contract or a sub-contract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- (b) When this clause is included in a fixed- price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or un-priced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.
- (c) If the Contractor does not have an approved purchasing system, consent to sub-contract is required for any subcontract that—
 - (1) Is of the cost-reimbursement, time-and- materials, or labor-hour type; or
 - (2) Is fixed-price and exceeds—
 - (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
 - (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following sub-contracts: **Notwithstanding the language contained in paragraph (c), written consent from the Contracting Officer is required prior to entering into any subcontractor over the simplified acquisition threshold that was not initially proposed.**
- (e)
 - (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
 - (i) A description of the supplies or services to be subcontracted.
 - (ii) Identification of the type of sub-contract to be used.
 - (iii) Identification of the proposed subcontractor.
 - (iv) The proposed subcontract price.
 - (v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
 - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
 - (vii) A negotiation memorandum reflecting—
 - (A) The principal elements of the sub-contract price negotiations;

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- (B) The most significant considerations controlling establishment of initial or re-revised prices;
 - (C) The reason certified cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—
- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404–4(c)(4)(i).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: _____

(End of clause)

252.203-7004 DISPLAY OF HOTLINE POSTERS (AUG 2019)

(Applicable to Purchase Orders that exceed \$6 million, except those that are commercial items. Applies to Non-Commercial procurements only.)

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

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

(b) *Display of hotline poster(s).*

(1)

- (i) The Contractor shall display prominently the DoD fraud, waste, and abuse hotline poster prepared by the DoD Office of the Inspector General, in effect at time of contract award, in common work areas within business segments performing work under Department of Defense (DoD) contracts.
- (ii) For contracts performed outside the United States, when security concerns can be appropriately demonstrated, the contracting officer may provide the contractor the option to publicize the program to contractor personnel in a manner other than public display of the poster, such as private employee written instructions and briefings.

(2) If the contract is funded, in whole or in part, by Department of Homeland Security (DHS) disaster relief funds and the work is to be performed in the United States, the DHS fraud hotline poster shall be displayed in addition to the DoD hotline poster. If a display of a DHS fraud hotline poster is required, the Contractor may obtain such poster from—

- (i) DHS Office of Inspector General/MAIL STOP 0305, Attn: Office of Investigations – Hotline, 245 Murray Lane SW, Washington, DC 20528-0305; or
- (ii) Via the internet at https://www.oig.dhs.gov/assets/Hotline/DHS_OIG_Hotline-optimized.jpg.

(c)

- (1) The DoD hotline poster may be obtained from: Defense Hotline, The Pentagon, Washington, D.C. 20301-1900, or is also available via the internet at <https://www.dodig.mil/Resources/Posters-and-Brochures/>.
- (2) If a significant portion of the employee workforce does not speak English, then the poster is to be displayed in the foreign languages that a significant portion of the employees speak.
- (3) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the required poster at the website.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Defense Federal Acquisition Regulation Supplement [203.1004](#) (b)(2)(ii) on the date of subcontract award, except when the subcontract is for the acquisition of a commercial item.

(End of clause)

252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (JAN 2020)

(Applicable to all Purchase Orders including those for the acquisition of Commercial Items. Applies to Commercial and Non-Commercial procurements.)

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

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“Covered defense telecommunications equipment or services” means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;
- (2) Telecommunications services provided by such entities or using such equipment; or
- (3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Covered foreign country” means—

- (1) The People’s Republic of China; or
- (2) The Russian Federation.

“Covered missions” means—

- (1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or
- (2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

“Critical technology” means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

- (b) *Prohibition.* In accordance with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), the contractor shall not provide to the Government any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any

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system, unless the covered defense telecommunication equipment or services are covered by a waiver described in Defense Federal Acquisition Regulation Supplement [204.2104](#) .

(c) *Procedures.* The Contractor shall review the list of excluded parties in the System for Award Management (SAM) at <https://www.sam.gov> for entities that are excluded when providing any equipment, system, or service, to carry out covered missions, that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) *Reporting.*

- (1) In the event the Contractor identifies covered defense telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, the Contractor shall report at <https://dibnet.dod.mil> the information in paragraph (d)(2) of this clause.
- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - (i) Within 3 business days from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 30 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered defense telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)