

**CUSTOMER CONTRACT REQUIREMENTS**  
**Vienna Proprietary Program, Rev 2**  
**CUSTOMER CONTRACT C-384**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

**1. FAR Clauses** The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

**52.203-6 Restrictions on Subcontractor Sales to the Government** (SEP 2006). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

**52.203-7 Anti-Kickback Procedures** (MAY 2014). Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause, excluding subparagraph (c)(1), applies only if this contract exceeds \$150,000.

**52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity** (MAY 2014). This clause applies to this contract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.

**52.203-10 Price or Fee Adjustment for Illegal or Improper Activity** (MAY 2014). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (OCT 2012). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

**52.203-12 Limitation on Payments to Influence Certain Federal Transactions** (OCT 2010). This clause applies only if this contract exceeds \$150,000. Paragraph (g)(2) is modified to read as follows: "(g)(2) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

**52.203-13 Contractor Code of Business Ethics and Conduct** (APR 2010). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (AUG 2013). Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals is or is not debarred, suspended, or proposed for debarment by the Federal Government. This clause does not apply to contracts where Seller is providing commercially available off-the shelf items.

**52.215-2 Audit and Records - Negotiation** (OCT 2010). This clause applies only if this contract exceeds \$150,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types; (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

**52.215-11 Price Reduction for Defective Certified Cost or Pricing Data -- Modifications** (AUG 2011). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. "Contracting Officer" shall mean "Contracting Officer or Buyer." In subparagraph (d)(2)(i)(A), delete "to the Contracting Officer." In subparagraph (d)(2)(ii)(B), "Government" means "Government" or "Buyer." In Paragraph (e), "United States" shall mean "United States or Buyer."

**52.215-13 Subcontractor Certified Cost or Pricing Data -- Modifications** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. The certificate required by paragraph (c) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

**52.215-14 Integrity of Unit Prices** (OCT 2010). This clause applies except for contracts at or below \$150,000; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

**52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions** (JUL 2005). This clause applies to this contract if it meets the requirements of FAR 15.408(j).

**52.215-19 Notification of Ownership Changes** (OCT 1997). This clause applies to this contract if it meets the requirements of FAR 15.408(k).

**52.215-21 Requirement for Certified Cost or Pricing Data or Information Other Than Certified Cost and Pricing Data - Modifications** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer. Insert the following in lieu of paragraph (a)(2): "Buyer's audit rights to determine price reasonableness shall also apply to verify any request for an exception under this clause. For items priced using catalog or market

prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace."

**52.215-23 Limitations on Pass-Through Charges.** (OCT 2009). This clause applies to all cost-reimbursement subcontracts that exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the contract is with DoD, then this clause applies to all cost-reimbursement subcontracts and fixed-price subcontracts, 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. In paragraph (c), "Contracting Officer" shall mean Buyer.

**52.222-1 Notice to the Government of Labor Disputes** (FEB 1997). The terms "Contracting Officer" shall mean Buyer.

**52.222-10 Compliance With Copeland Act Requirements** (FEB 1988).

**52.222-11 Subcontracts (Labor Standards)** (MAY 2014). Seller shall include this clause in its subcontracts and shall require such subcontractors to flow this clause to all lower tier subcontractors. The following FAR clauses are incorporated herein by this reference and made a part of this contract: 52.222-4 Contract Work Hours and Safety Standards-Overtime Compensation, 52.222-6 Construction Wage Rate Requirements; 52.222-7 Withholding of Funds; 52.222-8 Payrolls and Basic Records; 52.222-9 Apprentices and Trainees; 52.222-10 Compliance With Copeland Act Requirements; 52.222-11, Subcontracts (Labor Standards); 52.222-12 Contract Termination - Debarment; 52.222-13 Compliance with Construction Wage Rate Requirements statute and Related Act Regulations; 52.222-14 Disputes Concerning Labor Standards; and 52.222-15 Certification of Eligibility. Within 7 days after award of the contract, Seller shall deliver to Buyer a signed and dated acknowledgement that the clauses set forth in paragraph (b) of this clause have been included in their subcontracts.

**52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.** (MAY 2014). This clause applies only if this contract exceeds \$15,000.

**52.222-21 Prohibition of Segregated Facilities** (FEB 1999).

**52.222-26 Equal Opportunity** (MAR 2007).

**52.222-27 Affirmative Action Compliance Requirements for Construction** (FEB 1999). This clause applies only if this contract exceeds \$10,000.

**52.222-35 Equal Opportunity for Veterans.** (JUL 2014). This clause applies only if this contract is \$100,000 or more.

**52.222-36 Equal Opportunity for Workers with Disabilities** (JUL 2014). This clause applies only if this contract exceeds \$15,000.

**52.222-37 Employment Reports on Veterans** (JUL 2014). This clause applies if this contract is \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**52.222-40 Notification of Employee Rights Under the National Labor Relations Act.** (DEC 2010).

**52.222-41 Service Contract Labor Standards** (MAY 2014). This clause applies only if this contract is subject to the Act.

**52.222-50 Combating Trafficking in Persons** (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

**52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts** (MAY 2012). In paragraphs (c) and (d), the environmental point of contact is Buyer's Authorized Procurement Representative, and "Contracting Officer" is deleted. In subparagraph (c) (2) (i), October 31 is September 30. Add paragraph (e) as follows: Seller's acceptance of this contract signifies Seller's certification to the requirements of FAR 52.223-1.

**52.223-3 Hazardous Material Identification and Material Safety Data** (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

**52.223-7 Notice of Radioactive Materials** (JAN 1997). This clause applies only if this contract involves (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. "Contracting Officer" shall mean Buyer. In the blank in paragraph (a), insert "60 days."

**52.223-11 Ozone Depleting Substances** (MAY 2001).

**52.223-15 Energy Efficiency In Energy-Consuming Products** (DEC 2007).

**52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving** (AUG 2011).

**52.225-1 Buy American - Supplies** (MAY 2014). The term "Contracting Officer" shall mean Buyer the first time it is used in paragraph (c). In paragraph (d), the phrase "in the provision of the solicitation entitled 'Buy American Certificate' is deleted and replaced with "in its offer."

**52.225-13 Restriction on Certain Foreign Purchases** (JUN 2008).

**52.227-1 Authorization and Consent** (DEC 2007).

**52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement** (DEC 2007). A copy of each notice sent to the Government will be sent to Buyer.

**52.227-10 Filing of Patent Applications - Classified Subject Matter** (DEC 2007).

**52.227-19 Commercial Computer Software License** (DEC 2007).

**52.228-5 Insurance - Work on a Government Installation** (JAN 1997).

This clause applies to contracts that requires work on a Government installation. In paragraph (b) and (b)2, "Contracting Officer" shall mean "Buyer". In paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer". Seller shall provide and maintain insurance as set forth in this contract, which is TBP.

**52.230-6 Administration of Cost Accounting Standards** (JUN 2010). Add "Buyer and the" before "CFAO" in paragraph (m). This clause applies if clause H001, H002, H004 or H007 is included in this contract.

**52.232-27 Prompt Payment for Construction Contracts** (MAY 2014).

**52.232-39 Unenforceability of Unauthorized Obligations** (JUN 2013).

**52.232-40 Providing Accelerated Payments to Small Business Subcontractors.** (DEC 2013). This clause applies to contracts with small business concerns. The term "Contractor" retains its original meaning.

**52.237-2 Protection of Government Buildings, Equipment, and Vegetation** (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

**52.244-6 Subcontracts for Commercial Items** (OCT 2014). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

**52.245-1 Government Property** (APR 2012). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**52.245-2 Government Property Installation Operation Services** (APR 2012). Delete the first sentence of paragraph (a) and insert the following in lieu thereof: "Certain Government property was furnished to Buyer by the Government in an 'as-is-where is' condition." Delete the second sentence of paragraph (a), and insert the following in lieu thereof: "Buyer makes no warranty regarding the suitability for use of said property by Seller under this contract." In the third sentence of paragraph (a), delete "as specified in the solicitation." In paragraph (b), "Government" means Buyer the first time it is used. Delete paragraphs (c) and (e).

**52.245-2 Government Property Installation Operation Services** (JUN 2007).

**52.247-63 Preference for U.S.-Flag Air Carriers** (JUN 2003). This clause only applies if this contract involves international air transportation.

**2. Customer Required Clauses.** The following contract clauses are incorporated by reference. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

**Cl.203-001 U. S. Government Inspector General and the U. S. Government Hotline** (AUG 2004): This clause applies only if this contract exceeds \$100,000 and is not for commercial items or components.

(a) The contractor must report to the U. S. Government Inspector General (IG) any and all possible violations of federal law or illegal intelligence activities related to this contract by individuals charging directly or indirectly to this contract.

(b) The IG shall have access to any individual charging directly or indirectly to this contract whose testimony is needed for the performance of the IG's duties. In addition, the IG shall have direct access to all records, reports, audits, reviews, recommendations, documents, e-mails, papers, or other material that relate to this contract with respect to which the IG has responsibilities. Failure on the part of any contractor to cooperate with the IG shall be grounds for administrative action by the Director, Office of Contracts, including contractual remedies.

(c) U. S. Government contractors and contractor personnel may report suspected instances of improper conduct through the U. S. Government IG Hotline at 703-808-1OIG (1644). Contractors shall make their employees aware of this Hotline.

(d) The contractor agrees to include the substance of this clause in all subcontracts exceeding the simplified acquisition threshold except those for commercial items or components, and those where the U. S. Government association must be protected.

**Cl.203-002 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies** (SEPT 2013): This clause applies only if this contract exceeds \$100,000 and is not for the purchase of commercial items or commercial components. For the purposes of subparagraphs (b)(2) and (b)(3), "Government" shall mean Government or Buyer. In paragraph (c), "through the Buyer" is inserted after "Contracting Officer." Paragraph (d) is deleted.

(a) Definitions. As used in this clause—

(1) "Arising out of a contract with the DoD" means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

(1) In a management or supervisory capacity on this contract;

(2) On the board of directors of the Contractor;

(3) As a consultant, agent, or representative for the Contractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; (4) An explanation of why a waiver is in the interest of national security.

(g) The contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with

the DoD by contacting the Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone 301-937-1542; [www.ojp.usdoj.gov/BJA/grant/DPFC.html](http://www.ojp.usdoj.gov/BJA/grant/DPFC.html).

#### **CI.203-003 PERSONAL CONDUCT (OCT 2014)**

(a) The Seller, its employees, and its subcontractors shall comply with the conduct requirements in effect at the Government's work site. The Buyer or its Government customer reserves the right to exclude or remove from the work site any employee of the contractor or of a subcontractor whom the Buyer or its Government customer deems careless, uncooperative, or whose continued employment on the work site is deemed by the Buyer or its Government customer to be contrary to the public interest.

(b) The Seller shall inform its employees that the Buyer and its Government customer has a zero tolerance policy for harassing behavior. Any Seller or its subcontractor employee determined by the Buyer or its Government customer to have engaged in harassing behavior shall be immediately escorted from the premises and denied further access to the worksite. The Seller shall emphasize this requirement to its employees.

(c) The Seller shall also inform its employees with access to the Buyer's or its Government customer's information systems that they shall use those systems only for official and authorized purposes in fulfilling the requirements of this contract and shall access only that information for which they have a valid need-to-know. Unauthorized collection, transmission, or use of Buyer or its Government customer procurement and financial information constitutes a misuse of Buyer and government-controlled information and in most circumstances a violation of non-disclosure agreements that can result in severe consequences for all parties involved, including criminal punishment, civil liability, and revocation of access.

(d) Exclusion from the worksite under the circumstances described in this clause shall not relieve the Seller from full performance of the contract, nor will it provide the basis for an excusable delay or any claims against the Buyer or its Government customer.

#### **CI.203-004 PREVENTING PERSONAL CONFLICTS OF INTEREST (OCT 2014)**

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

(1) *Source Selection Activities* are defined as:

§ Developing acquisition strategies, acquisition plans, government cost estimates, and source selection plans;

§ Developing justifications and approvals;

§ Developing statements of work;

§ Developing instructions to offerors and evaluation factors for award (Sections L and M);

§ Evaluating submitted proposal/quote information; determining competitive range; and ranking bids, proposals, or competitors;

§ Selecting sources for contract award; and

§ Preparing contracts.

(2) The *de minimis* amount is \$0 for Seller's employees participating in source selection activities, except for diversified defined benefit plans and diversified mutual fund investments as defined in paragraph (b)(1)(i) of this clause. This means that a Seller employee who is supporting an Government source selection can have no financial interest in a specific company if that specific company is competing in the Government source selection. The Government customer under this contract does not define a *de minimis* amount for the acquisition functions covered under FAR 3.1101. Contractors may follow the Office of Government Ethics guidelines when establishing the *de minimis* interests of their PCI program.

(b) *Requirements.* The Seller shall —

(1) Prohibit Seller employees with financial interest, personal activity, or relationship in or with a specific company from participating in source selection activities or gaining access to source selection information (to include sole source and competitive acquisitions) involving or affecting the specific

company. The following financial interests of Seller employees who participate in source selection activities or who obtain access to source selection information do not constitute a disqualifying PCI or present disqualifying appearance issues:

(i) Diversified Defined Benefit Plans, provided that:

§ The investments in the plan are administered by an independent trustee and the Seller employee does not participate in the selection of the plan's investments; and

§ The plan is not a profit-sharing or stock bonus plan.

(ii) 401(k) Plans, provided all of the underlying assets are diversified mutual funds;

(iii) Individual Retirement Accounts, provided all of the underlying assets are diversified mutual funds; and

(iv) Diversified Mutual Fund Investments and Diversified Unit Investment Trusts which do not have a stated policy of concentrating investments in any industry, business, single country other than the United States, or bonds of a single state within the United States.

(2) Obtain and maintain from each Seller employee assigned to participate in source selection activities or gain access to source selection information, a disclosure of interests which might be affected by the tasks to which the employee has been assigned. Seller employees who support these source selection activities must be PCI-free and sign a Non-Disclosure Agreement (NDA), acceptable to the Buyer, for each source selection they support.

(3) Submit to the Buyer an annual statement of compliance with the requirements of this clause and FAR Clause 52.203-16, signed by a senior corporate official authorized to bind the company.

Subcontractors subject to the requirements of this clause and FAR Clause 52.203-16 shall also submit an annual statement of compliance.

(4) Notify the Buyer in writing of any personal conflict of interest violation as soon as it is identified. Seller or its subcontractors shall notify the Buyer when a violation occurs, but may submit written notification directly to the Buyer. All written notifications shall include:

§ Prime contract number or program name;

§ Company name;

§ Employee name;

§ Task description or Statement of Work reference;

§ Personal conflict of interest violation description; and

§ Description of corrective action(s) taken or proposed.

(5) Notify the Buyer within seven calendar days if a PCI is discovered which cannot be successfully prevented or resolved, and the Seller intends to submit a mitigation plan or waiver request. Submit, in writing, a mitigation plan or waiver request to the Buyer within 45 days of notification. Seller and its subcontractors shall notify Buyer when submitting a mitigation plan or waiver request, but may submit requests directly to the Buyer.

(i) All mitigation plans shall include:

§ Prime contract number or program name;

§ Company name;

§ Employee name;

§ Task description or Statement of Work reference;

§ Personal conflict of interest description;

§ Reason(s) why the Seller employee must be assigned to the contract and the specific task(s); and

§ Steps taken or proposed to mitigate the personal conflict of interest.

(ii) All waiver requests shall include:

§ Prime contract number or program name;

§ Company name;

§ Employee name;

§ Task description or Statement of Work reference;

§ Personal conflict of interest description;



§ Reason(s) why the Seller employee must be assigned to the contract and the specific task(s);

§ Actions taken to identify other qualified Seller employees; and

§ Reason(s) why the Seller cannot mitigate the personal conflict of interest.

(c) Violations must be resolved before the Seller employee can begin performing the affected task(s).

(d) Mitigation plans and waiver requests must be approved before the Seller employee can begin performing the affected task(s).

(e) Subcontractor flowdown. The Seller shall include this clause in subcontracts that require FAR Clause 52.203-16.

**CI.204-001 Security Requirements (JAN 2013)**

(a) This clause shall apply to any aspect of this contract involving access to national security information

(b) The contractor shall maintain a comprehensive security program in accordance with the requirements of:

To be provided as required

(c) If, subsequent to the date of this contract, the security classification or security requirements of this contract are changed by the Government, and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract may be subject to an equitable adjustment under the Changes clause of this contract.

(d) The contractor shall submit a Standard Operating Procedures (SOP) document to the cognizant Government Program Security Officer (PSO) within 30 days of contract award unless otherwise specified in the contract. The SOP must be prepared in accordance with the requirements specified in the DD Form 254 and the List of Applicable IT-IA-IM Documents as required in the Buyer's prime contract.

(e) Classification levels of the association, work, hardware, and reports under this contract and associated security requirements are set forth in the attached DD Form 254. The contractor shall maintain all modified and/or fabricated hardware at the proper classification level(s) and physical security environment(s).

(f) The contractor agrees to permit the necessary polygraph interview of contractor and subcontractor personnel as required.

(g) The Government shall be afforded full, free, and uninhibited access to all facilities, installations, technical capabilities, operations, documentation, records, and data bases for the purpose of assessing the efficacy and efficiency of the contractor's safeguards against threats and hazards to the availability, integrity, and confidentiality of Government information.

(h) The prime contractor is responsible for providing security oversight and ensuring an effective security program for all subcontractor relationships that are formed as the result of this contract. The prime contractor shall include provisions in all subcontracts that substantially conform to the requirements of this clause.

(i) If any provision of the contract conflicts with the security instructions issued by the Contracting Officer, the contractor shall notify the Contracting Officer who will resolve the conflicts. When security regulations are in conflict, the contractor shall follow the most restrictive guidance and immediately refer the matter to the Contracting Officer for resolution.

(j) The contractor shall not disseminate in any manner technology or other program information prior to PSO evaluation and determination of appropriate security classification and control. Dissemination of classified program information to other Government agencies or to contractor personnel other than those specifically assigned to this contract is prohibited unless approved in writing by the PSO and the Contracting Officer.

(k) The contractor shall report security and compliance status as directed by the Government.

(l) If a change in security requirements, as provided in paragraph (c), results in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classification, or in more restrictive area controls than previously required, the contractor shall exert every reasonable effort compatible with the contractor's established policies to continue the performance of work under the contract in compliance with the change in security classification or requirements. If, despite reasonable efforts, the contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the contractor shall notify the Contracting Officer in writing. Until the Contracting Officer resolves the problem, the contractor shall continue safeguarding all classified material as required by this contract. After receiving the written notification, the Contracting Officer shall analyze the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the contractor can continue performance of the work under this contract. If, 15 days after receipt by the Contracting Officer of the notification of the contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the *Termination for the Convenience of the Government* clause.

(m) Security requirements are a material condition of this contract. Failure of the contractor to maintain and administer a security program compliant with the security requirements of this contract constitutes grounds for termination for default.

#### **Cl.204-008 Notice of Litigation (AUG 2010)**

(a) With respect to litigation to which the contractor is a party relating to this contract:

(1) The contractor shall, within five business days, notify the Contracting Officer of any litigation filed by a third party (including individuals, organizations, and federal, state, or local governmental entities) or subpoena involving or in any way relating to this contract and/or related subcontracts. Said notice shall include a copy of all documents filed with the court in connection with the litigation or subpoena to the extent such documents are not covered by a court-ordered seal or protective order.

(2) The Contracting Officer shall have the right to examine any pertinent documents filed with the court during the conduct of the litigation, and any documents and records provided to the third party in response to the subpoena.

(b) The contractor agrees to insert this clause in any subcontract under this contract.

#### **Cl.204-009 Release of Contract Information (JAN 2010)**

(a) The contractor shall not use or allow to be used any aspect of this contract for publicity, advertisement, or any other public relations purpose. Public announcement of the award or modification of this contract is expressly prohibited. This obligation will not expire upon completion or termination of this contract, but shall continue until rescinded by the U.S. Government.

(b) The contractor must obtain the written approval of the Contracting Officer before releasing any information related to this contract. This requirement extends to papers, articles, and presentations based on or referencing the work performed under this contract.

(c) The contractor agrees to insert this clause in any subcontract under this contract.

**CI.204-10 INFORMATION SYSTEM ACCESS (JAN 2013)**

- (a) This clause shall apply to any aspect of this contract involving access to or processing of proprietary or classified information.
- (b) The Seller shall comply with the requirements of:
- (1) All program security guides specified in the List of Applicable Information Technology-Information Assurance-Information Management (IT-IA-IM) Documents as provided by Buyer; and
  - (2) The latest revision to each document listed above, notice of which has been furnished to the Buyer by the Government and forwarded to Seller.
- (c) If, subsequent to the date of this contract, the IT-IA-IM requirements of this contract are changed by the Buyer's Customer, and if the changes cause an increase or decrease in costs or otherwise affect any other term or condition of this contract, the contract may be subject to an equitable adjustment under the Changes clause of this contract.
- (d) The Seller is responsible for providing IT-IA-IM oversight for all subcontractor relationships that are formed as the result of this contract. The Seller shall include provisions in all subcontracts that substantially conform to the requirements of this clause.
- (e) If any provision of the contract conflicts with instructions issued by the Buyer, the Seller shall notify the Buyer who will resolve the conflict. When IT-IA-IM regulations are in conflict, the Seller shall follow the most restrictive guidance and immediately refer the matter to the Buyer for resolution.
- (f) The IT-IA-IM requirements specified in this clause are a material condition of this contract. Failure of the Seller to maintain and administer an information security program compliant with the IT-IA-IM requirements of this contract constitutes grounds for termination for default.

**CI. 209-002 Disclosure of Ownership or Control by a Foreign Government (SEP 2013).**

Seller/Bidder shall comply with the requirements of this clause when submitting a response to Buyer's solicitation. In addition, in the event of any change after contract award which requires disclosure under this clause, Seller shall submit a new or revised SF 328 to Buyer no later than three days after such change. The new or revised SF 328 shall meet the requirements of paragraph (c). "through Buyer" is added to the end of paragraph (b).

(a) Definitions. As used in this clause:

- (1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offeror's officers or a majority of the offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).
- (2) *Entity controlled by a foreign government* means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government, or any individual acting on behalf of a foreign government. It does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before 23 October 1992.
- (3) *Foreign government* includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.
- (4) *Proscribed information* means:

- ♣ Top Secret information;
- ♣ Communications Security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;
- ♣ Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;
- ♣ Special Access Program (SAP) information; or
- ♣ Sensitive Compartmented Information (SCI).

(b) Prohibition on Award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform

the contract, unless the U.S. Government Contracting Office or a designee has waived application of 10 U.S.C. §2536(a).

(c) Disclosure. The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision. If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror's immediate parent, intermediate parents, and the ultimate parent. The offeror shall submit a current SF 328, *Certificate Pertaining to Foreign Interests*, with their proposal. The SF 328 must include the following information:

(1) Offeror's point of contact for questions about disclosure (name and phone number with country code, city code, and area code, as applicable);

(2) Name and address of offeror;

(3) Name and address of entity controlled by a foreign government; and

(4) Description of interest, ownership percentage, and identification of foreign government.

(d) If during contract performance the foreign government ownership or control status of the contractor changes, the contractor shall submit an updated SF 328 to the Contracting Officer within one week of the change.

(e) Flow-down. The offeror agrees to include the requirements of this clause in all subcontract solicitations that involve potential access to proscribed information under this solicitation and any resulting contract.

#### **CI.209-003 Organizational Conflict of Interest (SEP 2009)**

(a) The offeror warrants, to the best of its knowledge and belief, that (1) there are no relevant facts that could give rise to organizational conflicts of interest (OCI) or (2) the offeror has disclosed all relevant information regarding any actual or potential OCI. Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other foreign or domestic government organizations, before preparing their proposals to determine whether the Government will require mitigation of those conflicts. If the successful offeror was aware, or should have been aware, of an OCI before award of this contract and did not fully disclose that conflict to the Contracting Officer, the Government may terminate the contract for default.

(b) If during contract performance the contractor discovers an OCI involving this contract, the contractor agrees to make an immediate and full disclosure in writing to the Contracting Officer. Such notification will include a description of the action the contractor and/or subcontractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict. The contractor will continue contract performance until notified by the Contracting Officer of any contrary actions to be taken. The Government may terminate this contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) The contractor shall inform the Contracting Officer of any activities, efforts, or actions planned, entered into, or on-going by the contractor or any other corporate entity of the contractor, at the prime or sub-contract level, involving the review of information or providing any advice, assistance, or support to foreign or domestic government agencies, entities, or units outside of the USG agency which may result in a perceived or actual OCI with any known USG agency activity. The contractor shall provide detailed information to the Contracting Officer as to the specifics of the situation immediately upon its recognition. Based on the severity of the conflict, the Contracting Officer may direct the contractor to take certain actions, revise current work effort, or restrict the contractor's future participation in USG contracts as may be necessary to appropriately neutralize, mitigate, or avoid the OCI.

(d) If necessary to mitigate OCI concerns, or when directed to do so by the Contracting Officer, the contractor shall submit an OCI plan for approval. The plan must describe how the contractor will mitigate, neutralize, or avoid potential and/or actual conflicts of interest or unfair competitive advantages. The contractor shall a completed for (to be provided), OCI Plan Matrix, to each new or

revised OCI plan submitted to the Contracting Officer. After approval of the OCI plan, the contractor must conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the plan signed by a corporate official at the level of Vice President or above. The contractor shall submit a revised OCI plan for approval whenever corporate, contractual, or personnel changes create or appear to create new OCI concerns, or when directed to do so by the Contracting Officer.

(e) The contractor shall insert a clause containing all the requirements of this clause in all subcontracts for work similar to the services provided by the prime contractor.

(f) Before this contract is modified to add new work or to significantly increase the period of performance, the contractor agrees to submit an OCI disclosure or representation if requested by the Government.

(g) The contractor shall allow the Government to review the contractor's compliance with these provisions or require such self-assessments or additional certifications as the Government deems appropriate

**CI.209-004 Organizational Conflict of Interest: Support Services (OCT 2014)**

(a) Determination. This contract requires the Seller to provide support services to the Buyer's Government customer that may result in actual or potential conflicts of interest for the Seller, or may provide the Seller with the potential to attain an unfair competitive advantage. To effectively mitigate such issues while fulfilling this contract, the Seller shall comply fully with the requirements and restrictions of this clause.

(b) Notification. The Seller shall notify the Buyer promptly upon learning that their company and/or any foreign or domestic division, sector, parent corporation, affiliate, sister corporation, or subsidiary thereof, intends to bid as a prime contractor or subcontractor at any tier on a solicitation to supply a particular system, program, and/or contract, or to serve as a subcontractor, vendor, or consultant to the supplier for any acquisition for which the Seller is providing program support under this contract. When this situation occurs, the Seller shall be prohibited from providing support for source selection activities for that system, program, and/or contract until the date of contract award. Upon notification by the Seller, the Buyer will make a determination whether the Seller accrued an actual conflict prior to solicitation pursuant to their activities under this contract.

(c) Employee Restrictions. Seller employees providing support services under this contract shall wait a minimum of two years from the date they stop working under this contract before beginning work on another proposal or contract to supply to the Government (either as a prime contractor or subcontractor) or act as a consultant to a supplier of any supplies or services that are directly or indirectly related to the subject of any work or services performed under this contract. This restriction applies whether the former support contract employee is now working for the same support contractor, for another division of the same corporation, or for a different company.

(d) Organizational Conflict of Interest Plan.

(1) The Seller shall submit an organizational conflict of interest (OCI) plan to the Buyer describing how the Seller will mitigate, neutralize, or avoid any potential or actual conflicts of interest or unfair competitive advantage. Contract award shall not occur before Buyer's Government Customer's approval of the Seller OCI plan.

(2) The restrictions of this clause apply fully except as amended in the approved OCI plan.

(3) The Seller shall conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the OCI plan signed by a corporate official no lower than the Vice President or corporate equivalent.

(4) The Seller shall notify the Buyer within seven calendar days whenever corporate, contractual, or personnel changes create or appear to create new organizational conflict of interest concerns. When necessary to mitigate those concerns, the Seller shall submit a revised OCI plan for approval, or may be directed to do so at any time by the Buyer.

- (5) In rare instances, the Buyer's Customer may waive the restrictions of this clause.
- (e) Corporate Changes. The Seller shall inform the Buyer within seven calendar days of the effective date of any corporate merger, acquisition, and/or divestiture that may affect this contract or the Buyer's Customer in any way.
- (f) Flow-down. The requirements of this clause shall be included in all subcontracts above the simplified acquisition threshold. Subcontractors shall be subject to this clause in the same manner as the Seller.
- (g) Corporate Organizational Conflict of Interest Plan. If the contractor has an approved Corporate OCI Plan on file with the Government Office of Contracts Policy of the appropriate agency, the most current approved version of the plan is incorporated into this contract by reference and is in full effect. If the Seller withdraws its approved Corporate OCI Plan, and is unable to provide an acceptable OCI plan or to obtain a waiver, the Buyer may terminate this contract for default due to non-compliance with OCI requirements.

#### **CI. 209-008 SUPPORT CONTRACTOR CORPORATE NON-DISCLOSURE AGREEMENT (FEB 2011)**

(a) Definitions. As used in this clause:

- (1) *Proprietary information* means information contained in a bid or proposal, cost or pricing data, or any other information disclosed to the Buyer and/or its Government customer, including a Seller's technical data, computer software, or business data (as those terms are defined in clause CI.227-002) that is properly designated and/or marked as proprietary by a Seller in accordance with law and regulation, and is held in confidence or disclosed under restriction to prevent uncontrolled distribution.
- (2) *Sensitive information* means the Buyer's and/or its Government customer's nonpublic planning, budgetary, and acquisition information (to include source selection sensitive, advanced acquisition, and contract information), and any Seller technical data or computer software delivered to the Buyer or its Government customer with limited or restricted rights (as defined in clause CI.227-002), and marked with a conforming marking.
- (3) *Disclosing party* means the owner or developer of proprietary or sensitive information.
- (4) *Support contractor*, for purposes of this agreement, means a contractor (including the Seller) under a contract the primary purpose of which is to furnish management support services, consultant and professional services; studies, analysis and evaluations; systems engineering, technical direction and assistance; operations and maintenance activities; and other services that may provide contractor employees access to sensitive or proprietary information.
- (5) *Unauthorized disclosure* means the disclosure of sensitive or proprietary information to any party who does not have a need to know that information or who is not contractually authorized to access the information.
- (b) Purpose. This support contract requires the Seller to have access to sensitive information and the proprietary information of other contractors, subcontractors, suppliers, and vendors. Any sensitive or proprietary information disclosed to the Seller by the Buyer or its Government customer, another authorized contractor, or a disclosing party under the provisions of this clause shall not be used by the receiving Seller for any purpose other than support of the Buyer contract for which it was furnished. The Seller understands that its unauthorized disclosure of such sensitive or proprietary information would be injurious to the interests of the Buyer and/or Government and the owner of the information, and shall therefore protect such information from disclosure by exercising the same degree of care used to protect its own proprietary information, and with no less than a reasonable standard of care for protection.
- (c) Corporate Non-Disclosure Agreement. To relieve the Seller from the burden of negotiating separate agreements to access or use disclosed proprietary information originating from other contractors, subcontractors, suppliers, and vendors, as well as U.S. Government program offices, the Buyer and its Government customer and Seller agree that this clause sets forth the rights and obligations of the Seller in its role as a support contractor and its subcontractors regarding the use, handling, protection, and safeguarding of sensitive or proprietary information on this contract. The Seller agrees to protect any

such information for as long as it remains subject to restrictions. This clause is meant to satisfy the non-disclosure agreement (NDA) requirements set forth in 10 U.S.C. §2320(f)(2)(B). As such, the Seller shall only enter into a separate NDA, confidentiality agreement, proprietary information agreement, or similar agreement with a disclosing party whose proprietary information is accessed or used in the performance of this contract on an exception basis, such as when the Seller is or may reasonably be expected to be a competitor of the disclosing party. The Seller shall notify the Buyer if an additional agreement is required by a disclosing party. Any such protections provided by such agreement for Seller proprietary information are in addition to, and take precedence over, the terms of this clause regarding contractor proprietary information.

(d) Third-Party Beneficiaries. In its role as a support contractor, the Seller agrees that each disclosing party (contractor, subcontractor, supplier, or vendor) which, pursuant to its U.S. Government contract or subcontract, discloses proprietary information to the Government or to the support contractor is a third-party beneficiary of this clause.

(e) Liability for Unauthorized Disclosure. The Seller agrees that the unauthorized disclosure of sensitive or proprietary information constitutes a breach of contract that may subject the contractor to appropriate legal remedies. If the Buyer and/or its Government customer or the disclosing party seeks legal remedy for breach by the Seller in their role as a support contractor, the Seller agrees:

- (1) It will not require the Buyer or its Government customer to be added as a necessary party to any enforcement action between the disclosing party and the Seller;
- (2) It will not seek a court to require either to post bond or to prove damages to seek injunctive relief;
- (3) To consent to federal jurisdiction for Buyer or Government actions; and
- (4) That the disclosing party may bring a direct, civil action in law or equity against the Seller in any state or federal court of competent jurisdiction.

(f) Cooperation. The Seller agrees in the event of an unauthorized disclosure, whether suspected or actual, to promptly notify the Buyer and the disclosing party, and cooperate with the Buyer and/or its Government customer and the disclosing party, whether acting separately or independently, in support of any reasonable fact-finding efforts and mutually agreed upon resolution actions. Any costs incurred by the Seller in said fact-finding efforts will not be passed on to the Buyer or its Government customer or disclosing party.

(g) Flowdown. The requirements of this clause shall be flowed down to and included in all subcontracts directly chargeable to this contract. The Seller shall notify the Buyer within seven business days of the award of any support subcontract. The notification shall identify the programs and/or contracts being supported, certify that the subcontractors have executed all appropriate implementing NDAs, and confirm that the terms of this clause have been accepted by the subcontractor.

(h) Implementing NDAs. Except as set forth elsewhere in this clause, the Seller shall make sensitive or proprietary information available only to individuals who have a valid need to access the information. The Seller shall require each individual requiring access to sensitive or proprietary information to execute an implementing NDA before granting access to such information. This individual implementing NDA shall include all the elements by the Buyer and/or its Government customer. The Seller shall maintain a list of individuals who have signed NDAs and have access to sensitive or proprietary information as an attachment to its approved OCI Plan for this contract, and submit an annual certification of compliance with the terms of the plan.

(i) Identification of Proprietary Information. Proprietary information shall be protected pursuant to this clause if it is disclosed:

- (1) In writing and clearly marked on its face as "proprietary" or with other words of similar meaning;
- (2) Orally or visually (for instance, during a plant tour, briefing, or demonstration), and is identified as proprietary at the time of the oral or visual disclosure by the Buyer or its Government customer or a contractor. The Seller shall treat all such information as proprietary unless within fifteen days the Seller

coordinates with the Buyer or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims;

(3) By electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the disclosing party marks it electronically as proprietary within the electronic transmission, with such marking to be displayed in human readable form along with any display of the proprietary information; or

(4) By delivery of an electronic storage medium or memory device, and the disclosing party marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

(j) Permissible Disclosure. Notwithstanding paragraph (e) above, the Seller is authorized to discuss and disclose sensitive or proprietary information that it receives in support of a particular Government program to employees of that particular Government program office pursuant to this contract and the license granted the Buyer or its Government customer by the disclosing party (including other support contractors supporting that same specific program), and other senior Buyer or Government executives outside of the program offices provided that any sensitive or proprietary information continues to bear the same legend(s) affixed by the disclosing party, whether provided in its original form or in some other format.

(k) Exceptions to Liability for Unauthorized Disclosure. The support contractor shall not be liable for unauthorized disclosure of sensitive or proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

(1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the Government or the disclosing party;

(2) In the public domain or became publicly known through no wrongful act of the support Seller;

(3) Sensitive information disclosed by the support contractor with the Contracting Officer's prior written approval;

(4) Proprietary information disclosed by the support contractor with the disclosing party's prior written permission;

(5) Independently developed by the support contractor, subsequent to its receipt, without the use of any sensitive or proprietary information;

(6) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;

(7) Specifically provided in writing by the Buyer or its Government customer to the support contractor with an unlimited rights license; or

(8) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the sensitive or proprietary information that is legally required.

(l) Licenses. Nothing contained in this clause, including the disclosure of any information hereunder, shall be construed as granting to the Seller a license or right to use the sensitive or proprietary information, either express or implied, under any patent, copyright, trade secret, or other intellectual property right now or hereafter owned by or controlled by or controlled by the disclosing party.

(m) No Warranties. The Seller expressly agrees that each disclosing party who discloses proprietary information to the Seller makes no warranties, assurances, guarantees, or representations as to the accuracy, completeness, or technical or scientific quality of any of their proprietary information.

Without restricting the generality of the foregoing, no warranty, assurance, guarantee, or representation is made by any disclosing party as to the merchantability, fitness for a particular purpose, or non-



infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third parties of any proprietary information disclosed to the support contractor.

(n) Compliance with Export Control Laws. The Seller shall not export (to include disclosing or providing access to a foreign person located anywhere as defined in 22 C.F.R §120.16) any technical information furnished by the disclosing party without first complying with all applicable U.S. export control laws and regulations, including the requirements of the International Traffic in Arms Regulations and the Export Administration Regulations. The Seller will first obtain the written consent of the disclosing party who originated the proprietary information before submitting an application to export such proprietary information.

(o) Notices. For any notice required or contemplated by this clause, the support Seller has the burden of determining from the Buyer the disclosing party's contractual point of contact, and for providing written notice thereto. The Buyer Officer will provide a list of the points of contact for service of notices for all support contractors identified in conjunction with the *Enabling Clause for Prime and Support Contractor Relationships*. Notice shall be deemed to have been given on:

(1) The date received if delivered personally or by overnight courier;

(2) The third day after being deposited in the U.S. mail, postage prepaid; or

(3) The date sent if sent by facsimile transmission or e-mail with a digital copy of the notice.

(q) Return of Sensitive and Proprietary Information. All proprietary information disclosed to the support contractor by the Buyer or its Government customer or a disclosing party shall remain the property of the disclosing party. Sensitive or proprietary information shall be destroyed or otherwise returned promptly at the request of the Buyer or its Government customer or a disclosing party, together with any copies thereof, to include that stored by computer memory or data storage system, and the Seller will certify to the disclosing party that it has done so. Notwithstanding the foregoing, the Seller may retain an archival copy for dispute resolution purposes in its legal counsel's office, as well as copies of any reports prepared for and provided to the Buyer or its Government customer specific to performance of this contract that contain or refer to the sensitive or proprietary information.

(p) No Waiver. Failure by the Buyer or its Government customer or a disclosing party to enforce any requirement in this clause shall not constitute a waiver in any subsequent breach of that requirement. If any requirement of this clause or part of such requirement is or becomes invalid or unenforceable, the remaining requirements shall remain in effect.

(r) Effective Date. The requirements of this clause shall be in force as of the effective date of this contract, and expire upon the completion or termination of this contract. These requirements may only be terminated or amended by the Buyer and the Seller by supplemental agreement. The confidentiality requirements of this clause shall survive completion or termination of this contract.

#### **CI.219-001 Utilization of Small Business Concerns (DEC 2011)**

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any

studies or surveys as may be conducted by the Contracting Officer or his representative as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) Definitions. As used in this contract—

—HubZone Small Business Concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

—Service-disabled Veteran-owned Small Business Concern —

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) —Service-disabled Veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

—Small Business Concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

—Small Disadvantaged Business Concern means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Central Contractor Registration (CCR) Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meet the SDB eligibility criteria of 13 CFR 124.1002.

—Veteran-owned Small Business Concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

—Women-owned Small Business Concern means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the CCR database at <http://www.sba.gov/hubzone>.

**CI.219-002 Small Business Subcontracting Plan (DEC 2011)**

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

—Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

—Commercial Item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

—Commercial Plan means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

—Indian Tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

—Individual Contract Plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

—Master Plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

—Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

- (i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
- (ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
  - (A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.
  - (B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.
  - (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
  - (D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.
- (2) A statement of—
  - (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
  - (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
  - (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
  - (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
  - (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
  - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
  - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—
  - (i) Small business concerns;
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns; and
  - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
- (i) Small business concerns (including ANC and Indian tribes);
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
  - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled *Utilization of Small Business Concerns* in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will cooperate in any studies or surveys as may be required by the contracting agency in order to determine the extent of compliance by the offeror with the subcontracting plan.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—
    - (A) Whether small business concerns were solicited and, if not, why not;
    - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
    - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if, why not;
    - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
    - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
    - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
    - (G) If applicable, the reason award was not made to a small business concern.
  - (iv) Records of any outreach efforts to contact—
    - (A) Trade associations;
    - (B) Business development organizations; and
    - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.
    - (D) Veterans service organizations.
  - (v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all —make-or-buy— decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the CCR database.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved,

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

- (i) A contract may have no more than one plan. When a modification meets the criteria in FAR 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.
- (j) Subcontracting plans are not required from subcontractors when the prime contract contains FAR Clause 52.212-5, *Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items*, or when the subcontractor provides a commercial item subject to FAR Clause 52.244-6, *Subcontracts for Commercial Items*, under a prime contract.
- (k) The failure of the contractor or subcontractor to comply in good faith with—
- (1) The clause of this contract entitled *Utilization of Small Business Concerns*; or
  - (2) An approved plan required by this clause, shall be a material breach of the contract.

**CI.219-003 SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (DEC 2011)**

- (a) Definition. *Subcontract*, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.
- (b) The Seller's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub.L.101-189, as amended, shall be included in and made a part of this contract. Upon expulsion from the test program or expiration of the test program, the Seller shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub.L.95-507.
- (c) The Seller shall submit Standard Form (SF) 295, *Summary Subcontract Report*, directly to the Buyer semi-annually for the six months ending 31 March and the twelve months ending 30 September. Reports are due 30 days after the close of each reporting period.
- (d) The failure of the Seller to comply in good faith with the clause of this contract entitled *Utilization of Small Business Concerns*, or an approved plan required by this clause, shall be a material breach of the contract.

**CI.222-003 EXCEPTIONS TO FEDERAL LABOR REQUIREMENTS (OCT 2014)**

The Seller shall comply to the maximum extent practicable with the FAR Clauses listed below if they are included in this contract, but with the following exceptions: (1) No wage determinations will be obtained or provided by the Buyer; (2) the Seller shall not directly contact the Department of Labor citing this contract without first obtaining the written approval of the Buyer; and, (3) no pricing adjustments or price re-determinations will occur due to labor rate or wage revisions during the life of this contract.

- 52.222-6, *Construction Wage Rate Requirements*;  
52.222-13, *Compliance with Construction Wage Rate Requirements and Related Act Regulations*;  
52.222-14, *Disputes Concerning Labor Standards*;  
52.222-16, *Approval of Wage Rates*;  
52.222-17, *Nondisplacement of Qualified Workers*;  
52.222-20, *Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000*;  
52.222-30, *Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Method)*;  
52.222-31, *Construction Wage Rate Requirements—Price Adjustment (Percentage Method)*;  
52.222-32, *Construction Wage Rate Requirements—Price Adjustment (Actual Method)*;  
52.222-41, *Service Contract Labor Standards*;  
52.222-42, *Statement of Equivalent Rates for Federal Hires*;  
52.222-43, *Fair Labor Standards Act and Service Contract Labor Standard—Price Adjustment (Multiple Year and Option Contracts)*;  
52.222-44, *Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment*;

52.222-48, *Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification*; and  
52-222.49, *Service Contract*

#### **CI. 223-002 Safety Precautions For Ammunition And Explosives (JAN 2004)**

(a) Definition. *Ammunition and explosives*, as used in this clause:

(1) Includes, but is not limited to, liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

- (i) Bulk;
- (ii) Ammunition;
- (iii) Rockets;
- (iv) Missiles;
- (v) Warheads;
- (vi) Devices; and
- (vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system:

- (i) Inert components containing no explosives, propellants, or pyrotechnics;
- (ii) Flammable liquids;
- (iii) Acids;
- (iv) Powdered metals; or
- (v) Other materials having fire or explosive characteristics.

(b) Safety Requirements.

(1) The contractor shall comply with the requirements of the *DoD Contractors' Safety Manual for Ammunition and Explosives*, DoD 4145.26-M hereafter referred to as "the Manual", in effect on the date of this contract. The contractor shall also comply with the following additional requirements:

(VARIABLE)

(2) The contractor shall allow the Government access to the contractor's facilities, personnel, and safety program documentation. The contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) Non-compliance with the Manual.

(1) If the Contracting Officer notifies the contractor of any non-compliance with the Manual or schedule provisions, the contractor shall take immediate steps to correct the non-compliance. The contractor is not entitled to reimbursement of costs incurred to correct non-compliances unless such reimbursement is specified elsewhere in the contract.

(2) The contractor has 30 days from the date of notification by the Contracting Officer to correct the non-compliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of non-compliances.

(3) If the contractor refuses or fails to correct non-compliances within the time period specified by the Contracting Officer, the Government has the right to direct the contractor to cease performance on all or part of this contract. The contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the contractor.

(4) The Contracting Officer may remove Government personnel at any time the contractor is in non-compliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the contractor, the contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the contractor



had in fact complied with the Manual or schedule provisions. If the contractor is entitled to an equitable adjustment, it shall be made in accordance with the *Changes* clause of this contract.

(d) Mishaps. If a mishap involving ammunition or explosives occurs, the contractor shall:

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) Contractor Responsibility for Safety.

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the contractor of its responsibility for the safety of:

(i) The contractor's personnel and property;

(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) Contractor Responsibility for Contract Performance.

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) Subcontractors.

(1) The contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) The Contracting Officer shall notify the prime contractor of all findings concerning subcontractor safety and compliance with the Manual. The Contracting Officer may furnish copies to the subcontractor. The contractor in turn shall communicate directly with the subcontractor, substituting its name for references to "the Government." The contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to Government personnel, property, or contract performance.

(2) The contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of Government personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The contractor shall notify the Contracting Officer before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the contractor shall request approval for such change in accordance with the clause of this contract entitled *Change in Place of Performance - Ammunition and Explosives*.

(End of clause)

**Cl.223-006 Contractor Compliance With Environmental, Occupational Safety and Health, and System Safety Requirements** (OCT 1997). In the first sentence in paragraph (b), insert "through Buyer" after "Contracting Officer."

(a) In performing work under this contract, the contractor shall comply with-

- (1) All applicable Federal, State, and local environmental, occupational safety and health, and system safety laws, regulations, policies and procedures in effect as of the date the contract is executed;
- (2) Any regulations, policies and procedures in effect at any Government facility where work will be performed;
- (3) Any contract specific requirements; and
- (4) Any Contracting Officer direction.

(b) **Conflicting Requirements.** The contractor shall provide written notification to the Contracting Officer of any conflicts in requirements. The notification will describe the conflicting requirements and their source; provide an estimate of any impact to the contract's cost, schedule, and any other terms and conditions; and provide a recommended solution. The notification will also identify any external organizations that the Contracting Officer or the contractor may have to coordinate with in order to implement the solution. The Contracting Officer will review the notification and provide written direction. Until the Contracting Officer issues that direction, the contractor will continue performance of the contract, to the extent practicable, giving precedence in the following order to requirements that originate from:

- (1) Federal, state, and local laws, regulations, policies and procedures;
- (2) Government facility regulations, policies and procedures; and
- (3) Contract specific direction:

(c) **Material Condition of Contract.** Environmental, occupational safety and health, and system safety requirements are a material condition of this contract. Failure of the contractor to maintain and administer an environmental and safety program that is compliant with the requirements of this contract shall constitute grounds for termination for default.

(d) The Contractor shall include this clause in all subcontracts.

(i) The contractor agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

- (1) Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;
- (2) In the public domain or becomes publicly known through no wrongful act of the support contractor;
- (3) Proprietary information disclosed by the support contractor with the contractors prior written permission;
- (4) Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
- (5) Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party;

(6) Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or

(7) Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.

**CI.227-001 Technical Data and Computer Software: Commercial Items (SEP 2013).** This clause is inapplicable to non-deliverables. It also does not apply to items which are contract data requirements but have not yet been delivered to the Government

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).

(2) *Commercial item* means:

(i) Any item, other than real property, but inclusive of computer software, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(A) Has been sold, leased, or licensed to the general public; or

(B) Has been offered for sale, lease, or license to the general public;

(ii) Any item that evolved from an item described in paragraph (i) of this definition through advances in technology or performance, and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation or contract;

(iii) Any item that would satisfy a criterion expressed in paragraphs (i) or (ii) of this definition, but for—

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. —Minor modifications means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process or computer software. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(iv) Any combination of items meeting the requirements of paragraphs (i), (ii), (iii), or (v) of this definition that are of a type customarily combined and sold in combination to the general public;

(v) Installation services, maintenance services, repair services, training services, and other services if—

(A) Such services are procured for support of an item referred to in paragraph (i), (ii), (iii), or (iv) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific

outcomes to be achieved, and under standard commercial terms and conditions. For purposes of these services—

(A) —Catalog price<sup>ll</sup> means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) —Market prices<sup>ll</sup> means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain, and that can be substantiated through competition or from sources independent of the offerors.

(vii) Any item, combination of items, or service referred to in paragraphs (i) through (vi) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

(3) *Computer database* means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

(4) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(5) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. The term does not include computer databases or computer software documentation.

(6) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the computer software.

(7) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(8) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. §403(8)). This term does not include computer software or business data.

(b) License in Commercial Technical Data.

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data relating to a commercial item, and to permit others to do so, that:

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party, or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose technical data without restrictions.

(2) Except as provided in paragraph (b)(1), the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only.

(3) The Government shall not use the technical data to manufacture additional quantities or release, perform, display, disclose, or authorize use of the technical data outside the Government without the contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) License in Commercial Computer Software. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with federal procurement law or do not otherwise satisfy user needs. The Government shall have only the rights specified in the license under which the commercial computer software and commercial computer software documentation was obtained. Such license shall be attached to and made a part of this contract.

(d) Additional License Rights. The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software. However, if the Government desires to obtain additional rights in technical data or computer software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether acceptable terms for transferring such rights can be reached. All technical data and computer software in which the contractor grants the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall specifically enumerate the additional rights granted the Government.

(e) Release From Liability. The contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data or computer software delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data or computer software that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

**CI.227-002 Rights in Technical Data and Computer Software: Noncommercial Items (FEB 2011).** This clause is inapplicable to non-deliverables. It also does not apply to items which are contract data requirements but have not yet been delivered to the Government.

(a) Definitions. As used in this clause:

(1) *Business data* means recorded information, regardless of the form or method of the recording, including specific business data contained in a computer database, of a financial, administrative, cost or pricing, or management nature, or other information incidental to contract administration or protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4).

(2) *Computer data base* means a collection of data recorded in a form capable of being processed and operated by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using or maintaining the software.

(6) *Delivery* means the formal act of transferring technical data, computer software, or business data to the Government as expressly delineated in the contract (including, but not limited to the Contract Data Requirements List, the statement of work, or elsewhere in the contract), in accordance with a specified schedule.

(7) *Detailed manufacturing or process data* means technical data and computer software that describes the steps, sequences, and conditions of manufacturing, processing, or assembly used by the manufacturer to produce an item or component, or to perform a process.

(8) *Developed* means that an item, component, or process, or an element of computer software has been shown through sufficient analysis or test to demonstrate to one of ordinary skill in the applicable art that there is a reasonable probability that the item, component, process, or element of computer software will work or perform its intended application, function, or purpose.

(9) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof. Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense. Private expense determinations should be made at the lowest practicable level.

(10) *Developed exclusively with Government funds* means all the costs of development were charged directly to a Government contract.

(11) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a Government contract, and partially with costs charged directly to a Government contract.

(12) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(13) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign Governments or international organizations. Government purposes include providing technical data and computer software for use in a competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software for commercial purposes or authorize others to do so.

(14) *Technical data* means recorded information (regardless of the form or method of the recording, including computer databases) of a scientific or technical nature (including computer software documentation). The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. §403(8)). This term does not include computer software or business data.

(b) Government Rights in Technical Data and Computer Software.

(1) *Government purpose rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction, to release or disclose technical data or computer software outside the Government, and to authorize persons to whom release has been made to use, modify, reproduce, perform, or display that technical data or computer software, provided that the recipient exercises such rights for Government purposes only.

- (i) The Government shall have Government purpose rights for a five-year period after contract completion or for such other period as may be mutually negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.
- (ii) The contractor has the exclusive right, including the right to license others, to use technical data or computer software in which the Government has obtained Government purpose rights under this contract, for any commercial purpose during the time period specified in paragraph (b)(1)(i) above and/or in the Government purpose rights legend prescribed by this clause.
- (iii) The Government shall have Government purpose rights in technical data or computer software delivered under this contract that:
- (A) Pertain to items, components, computer software, or processes developed with mixed funding, except when the Government is entitled to unlimited rights;
  - (B) Were created with mixed funding in the performance of a contract that does not specifically require the development, manufacture, construction, or production of items, components, computer software, or processes;
  - (C) The contractor has previously or is currently providing with Government purpose rights under another Government contract; or
  - (D) The parties have agreed shall be delivered with Government purpose rights.
- (iv) The Government may release the technical data or computer software to any third party as described in paragraph (b)(1) above if:
- (A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
  - (B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
  - (C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
- (2) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.
- (i) The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data, or authorize the use or reproduction of the data by persons outside the Government if such reproduction, release, disclosure, or use is:
- (A) Necessary for emergency repair and overhaul. In each instance of disclosure outside the Government, the Government shall:
    - (I) Prohibit the further reproduction, release, or disclosure of such technical data;

- (II) Notify the party who has granted limited rights that such reproduction or use by, or release or disclosure to particular contractors or subcontractors is necessary;
- (III) Insert clause , *Protection of Information, and Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving development contractors;
- (IV) Insert clause *Support Contractor Corporate Non-Disclosure Agreement, and Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*, into the contractual arrangement with the receiving support contractor(s). An additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the technical data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution; and
- (V) Require the recipient of limited rights technical data necessary for emergency repair or overhaul to destroy such technical data and any copies in its possession promptly following completion of the emergency repair/overhaul, and to notify the contractor that it has been destroyed; or
- (B) Is in the interest of the Government when a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government is required for evaluation or information purposes, and is subject to a prohibition on further release, disclosure, or use of the technical data.
- (ii) The Government and the contractor agree to cooperate to ensure that execution of necessary NDAs shall not delay or inhibit performance of this contract. Said agreements shall not otherwise restrict any rights due the Government under this contract.
- (iii) Except as otherwise provided under paragraphs (b)(6)(i)-(xi), the Government shall have limited rights in technical data delivered under this contract that:
- (A) Pertain to items, components, or processes developed exclusively at private expense and marked with the limited rights legends prescribed by this clause;
- (B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes; or
- (C) The parties have agreed shall be delivered with limited rights.
- (iv) The contractor and its subcontractors are not required to provide the Government additional rights to use, modify, reproduce, release, perform, or display, technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such items.
- (3) *Prior Government rights* means that technical data or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—
- (i) The parties have agreed otherwise; or
- (ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.



(4) *Restricted rights* apply only to non-commercial computer software, and means the Government's rights to:

- (i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time-shared unless otherwise permitted by this contract;
- (ii) Transfer a computer program to another Government agency without the further permission of the contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
- (iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
- (iv) Modify computer software, provided that the Government may—
  - (A) Use the modified software only as provided in paragraphs (b)(4)(i) and (iii) of this clause; and
  - (B) Not release or disclose the modified software except as provided in paragraphs (b)(4)(ii), (v) and (vi) of this clause;
  - (v) Permit contractors or subcontractors performing service contracts in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs, or when necessary to respond to urgent tactical situations, provided that—
    - (A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors is necessary;
    - (B) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
    - (C) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* 008 is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
    - (D) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
    - (E) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose; and
    - (F) Such use is subject to the limitation in paragraph (b)(4)(i) of this clause.
  - (vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

- (A) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
- (B) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause *Support Contractor Corporate Non-Disclosure Agreement* is used, additional non-disclosure, confidentiality, proprietary information, or similar agreements may be required by the owner of the technical data or computer software, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
- (C) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract.
- (D) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (b)(4)(iv) of this clause, for any other purpose.
- (vii) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that was developed exclusively at private expense.
- (viii) The contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(5) of this clause). The license shall enumerate the additional rights granted the Government.
- (5) *Specifically negotiated license rights* means a license granted by the contractor wherein the standard license rights granted to the Government under paragraphs (b)(1), (2), (3), (4), and (6), including the period during which the Government shall have government purpose rights in technical data or computer software, are modified by mutual agreement to provide such rights as the parties consider appropriate, but does not provide the Government lesser rights than limited rights for technical data or restricted rights for computer software unless mutually agreed by the contracting parties. Any rights so negotiated shall be identified in a license agreement made part of this contract and incorporated into Section J.
- (6) *Unlimited rights* means the rights to use, modify, reproduce, perform, display, release, or disclose technical data and computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so. The Government shall have unlimited rights in:
- (i) Technical data pertaining to an item, component, or process, or pertaining to software code or a software program that has been or will be developed exclusively with Government funds;
  - (ii) Computer software developed exclusively with Government funds;
  - (iii) Form, fit, and function data;
  - (iv) Technical data that is necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

- (v) Studies, analyses, test data, or similar data when the study, analysis, test, or similar work was specified as an element of performance;
  - (vi) Computer software documentation required to be delivered under this contract;
  - (vii) Technical data created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
  - (viii) Corrections or changes to technical data or computer software furnished by the Government;
  - (ix) Technical data or computer software that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on the further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party, or the sale or transfer of some or all of a business entity or its assets to another party;
  - (x) Technical data or computer software in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;
  - (xi) Technical data or computer software furnished to the Government under this or any other Government contract or subcontract thereunder, with Government purpose rights, limited rights, or restricted rights, and the restrictive condition(s) has/have expired, or the Government purpose rights and the contractor's exclusive right to use such data for commercial purposes have expired.
- (c) For business data marked as proprietary or with similar legends, the Government may duplicate, use, and disclose such data within the Government solely for evaluation, verification, validation, reporting, and program monitoring and management purposes in connection with this contract. The Government may disclose such business data to its support contractors identified in clause *Enabling Clause for Prime and Support Contractor Relationships*, for these same purposes if and when:
- (1) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Protection of Information*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*;
  - (2) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses *Support Contractor Corporate Non-Disclosure Agreement*, and *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*. When clause entitled *Support Contractor Corporate Non-Disclosure Agreement*, is used, additional non-disclosure, confidentiality, proprietary information, or similar agreement may be required by the owner of the business data, but only on an exception basis, e.g., when such third party is or may be a direct competitor of the owner of the technical data or computer software. In the event an additional agreement is deemed necessary, the Contracting Officer shall be notified prior to its execution.
- (i) The Government and contractor agree to cooperate to ensure that execution of any additional agreements shall not delay or inhibit performance of this contract. Such agreements shall not otherwise restrict any rights due the Government under this contract;
- (d) Other Information That Cannot Easily Be Categorized. For information that cannot easily be categorized as technical data or business data (e.g., program schedules, Earned Value Management System reports, and program management reports), and is of sufficient detail to show a contractor's confidential business practices, shall be identified before or as soon as practicable after contract award. The parties will agree as to the parties' rights and obligations in such data and how it is to be marked, handled, used, and disclosed to third parties. Such agreement shall be in writing, attached to, and made a part of the contract.

(e) Release from Liability. The contractor agrees to release the Government from liability for any release or disclosure of technical data and computer software made in accordance with this clause, in accordance with the terms of a license per this clause, or by others to whom the recipient has released or disclosed the data, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed contractor data marked with restrictive legends.

(f) Rights in Derivative Computer Software or Computer Software Documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(g) Contractor Rights in Technical Data and Computer Software. The contractor retains all rights not granted to the Government.

(h) Third Party Copyrights. The contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data and computer software to be delivered under this contract unless the contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses of the appropriate scope as defined in paragraphs (b)(1), (2), (4) and (6) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the technical data and computer software transmittal document.

(i) Assertions of Other than Unlimited Rights.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (i)(3) of this clause, technical data and/or computer software that the contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the "Attachment"). The contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software is listed in the Attachment.

(3) The contractor may make other assertions of other than unlimited rights in technical data and/or computer software after contract award. Such assertions must be based on new information or inadvertent omission unless the inadvertent omission would have materially affected the source selection decision in the reasonable determination of the Contracting Officer (in which case no assertion based on an inadvertent omission may be allowed).

(4) The contractor shall submit such post-contract award assertion(s) to the Contracting Officer as soon as practicable but prior to the scheduled date for delivery of the technical data or computer software. All new assertions submitted after award shall be added to the Attachment in a timely fashion after submission of the assertion to the Contracting Officer. An official authorized to contractually obligate the contractor must sign the assertion(s). The contractor assertion(s) shall include the information specified in paragraph (d) of clause *Identification and Assertion of Use, Release, or Disclosure Restrictions*.

(5) The Contracting Officer may request the contractor to provide sufficient information to enable the Government to evaluate the contractor's assertion(s). The Contracting Officer reserves the right to add the contractor's assertions to the Attachment and validate any listed assertion at a later date in accordance with the procedures outlined in clause *Validation of Restrictive Markings on Technical Data and Computer Software*.

(j) Marking Requirements for Delivered Technical Data or Computer Software. The contractor may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data and computer software delivered to the Government by marking such technical data and computer software. Such markings shall be in the form of legends found in paragraphs (k)(1)

through (4), or as otherwise authorized in this contract, (e.g., pursuant to an agreement for the archiving of mixed data pursuant to paragraph (d) of this clause). The notice of copyright prescribed under 17 U.S.C. §401 or §402 (with language, if applicable, noting that the Government contributed funding and therefore has rights in the copyrighted material )is also allowed.

(k) General Marking Instructions. The contractor shall conspicuously and legibly mark the appropriate legend on all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, on the title/cover page of the printed material containing technical data or computer software for which restrictions are asserted. Mark each subsequent sheet of data with an abbreviated marking(s) to indicate the applicable restrictive rights assertion(s), and refer to the title/cover page for additional information. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, annotating, or other appropriate identifier. Technical data and computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data and computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(1) Government Purpose Rights Markings. Technical data or computer software delivered or otherwise furnished to the Government with Government purpose rights shall be marked as follows:

#### Government Purpose Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data and computer software are restricted by paragraph (b)(1) of clause *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software, or portions thereof marked with this legend, must also reproduce the markings.

(End of legend)

(2) Limited Rights Markings. Technical data delivered or otherwise furnished to the Government with limited rights shall be marked as follows:

#### Limited Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of clause, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of technical data, or portions thereof marked with this legend, must also reproduce the markings. Any person, other than Government officials or others specifically authorized by the Government, who has been provided access to this technical data must promptly notify the above-named contractor.

(End of legend)

(3) Restricted Rights Markings. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

## Restricted Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by paragraph (b)(4) of clause, *Rights in Technical Data and Computer Software: Noncommercial Items*, contained in the contract identified above. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such computer software must promptly notify the above-named contractor. (End of legend)

(4) Special License Rights Markings. Technical data and computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

## Special License Rights

Contract No: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this data and/or software are restricted by \_\_\_\_\_ [*Insert license identifier*]. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(l) Pre-Existing Data Markings. If the terms of a prior contract or license permitted the contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose a technical data or computer software deliverable under this contract, and those restrictions are still applicable, the contractor may mark such technical data or computer software with the appropriate restrictive conforming legend for which the technical data or computer software qualified under the prior contract or license. The marking procedures in paragraphs (j) and (k) of this clause shall be followed.

(m) Removal of Unjustified Markings. Notwithstanding any other provision of this contract concerning inspection and acceptance, if any technical data or computer software delivered or otherwise provided under this contract are marked with the notices specified at (k)(1)-(4) of this clause, and the use of such is not authorized by this clause, the Government may ignore, or at the contractor's expense, correct or strike the marking if, in accordance with the procedures in clause *Validation of Restrictive Markings on Technical Data and Computer Software*, of this contract, the technical data or computer software is delivered or otherwise provided with a restrictive marking determined to be unjustified.

(n) Removal of Nonconforming Markings. A nonconforming marking is a marking placed on technical data or computer software delivered to the Government under this contract that is not in a format authorized by this contract. Correction of nonconforming markings is not subject to the *Validation of Restrictive Markings on Technical Data and Computer Software* clause of this contract. To the extent practicable, the Government shall return technical data or computer software marked with nonconforming markings to the contractor and provide the contractor an opportunity to correct or strike the nonconforming marking at no cost to the Government. If the contractor fails to correct the nonconforming marking and return the corrected technical data or computer software within 60 days following the contractor's receipt of the data, the Contracting Officer may ignore, or at the contractor's expense, remove, correct, or strike any nonconforming marking.

(o) Unmarked Technical Data or Computer Software. Technical data or computer software delivered to the Government under this contract without restrictive markings as set forth herein shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction.

However, to the extent the technical data or computer software has not been disclosed without restriction outside the Government, the contractor may request, within six months after delivery of such technical data or computer software (or a longer time approved by the Contracting Officer for good cause shown), permission to have notices placed on qualifying technical data or computer software at the contractor's expense, and the Contracting Officer may agree to do so if the contractor:

(1) Identifies the technical data or computer software on which the omitted notice is to be placed;

(2) Demonstrates that the omission of the notice was inadvertent;

(3) Establishes that the use of the proposed notice is authorized; and

(4) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such technical data or computer software made prior to the addition of the notice or resulting from the omission of the notice.

(p) Relation to Patents. Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(q) Limitation on Charges for Rights in Technical Data or Computer Software.

(1) The contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the technical data or computer software; or

(ii) The technical data or computer software is available to the public without restrictions.

(2) The limitation in paragraph (q)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the contractor to acquire rights in subcontractor or supplier technical data or computer software if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(r) Applicability to Subcontractors or Suppliers.

(1) The contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. §2320, 10 U.S.C. §2321, and the identification, assertion, and delivery processes of paragraph (i) of this clause are recognized and protected.

(2) Whenever any technical data or computer software for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the contractor shall flow down this clause to all of its subcontractors, vendors or suppliers (at any tier), and require its subcontractors, vendors, or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data or computer software required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when

there is a requirement in the prime contract for technical data or computer software which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data or computer software directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

**Cl.227-003 Validation of Restrictive Markings on Technical Data and Computer Software (FEB 2011).** This clause applies to Seller's delivery of technical data or computer software except for commercial items or commercial components.

(a) The Government shall presume that a contractor's asserted use or release restrictions are justified on the basis that the item (to include computer software), component, or process was developed exclusively at private expense for commercial items as defined in FAR Part 12. The Government will not challenge such assertions unless information the Government demonstrates that the item, component, or process was not developed exclusively at private expense.

(b) Justification. The contractor is responsible for maintaining records sufficient to justify the validity of its markings that restrictions on the Government's right to use, modify, reproduce, perform, display, release, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except for commercial items, the contractors shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(c) Pre-challenge Request for Information.

(1) The Contracting Officer may request the contractor to furnish a written explanation for any restriction asserted by the contractor on the right of the United States to use, or authorize use of, technical data or computer software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the contractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the contractor to justify the validity of any restrictive marking on technical data or computer software, accompanied with supporting documentation. The contractor shall submit such written data within a reasonable time after it is requested by the Contracting Officer.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking, and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer shall follow the procedures in paragraph (d) of this clause.

(3) If the contractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (d) of this clause.

(d) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting



Officer shall send a written challenge notice to the contractor or subcontractor asserting the restrictive markings. Such challenge shall:

- (i) State the specific grounds for challenging the asserted restriction;
- (ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;
- (iii) State that a Contracting Officer's final decision, issued pursuant to paragraph (f) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor to which such notice is being provided); and
- (iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) of this clause.

(2) The Contracting Officer shall extend the time for response if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978, and shall be certified in the form prescribed at FAR Subpart 33.207, regardless of dollar amount.

(4) A contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first unanswered challenge. The Contracting Officer initiating the first unanswered challenge after consultation with the contractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the contractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) Final Decision When Contractor or Subcontractor Fails to Respond. When a contractor or subcontractor fails to respond to a challenge notice, other than a failure to respond to a challenge related to a commercial item, the Contracting Officer will issue a final decision to the contractor or subcontractor in accordance with the *Disputes* clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (d)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (f)(2)(ii) through (iv) of this clause.

(f) Final Decision When the Contractor Responds.

(1) If the Contracting Officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the contractor or subcontractor in accordance with the *Disputes* clause of this contract. Notwithstanding paragraph (e) of the *Disputes* clause, the final decision shall be issued within sixty (60) days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the contractor or subcontractor that the Government will require. The notification of a longer period will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for ninety (90) days from the issuance of the Contracting Officer's final decision. The contractor agrees that if it intends to file suit in the United States Claims Court, it will provide a notice of intent to file suit to the

Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the contractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor to take the required action constitutes agreement with the Contracting Officer's final decision.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the contractor agrees that the Government may strike or ignore the restrictive markings, if the contractor fails to file its suit within one (1) year after issuance of the Contracting Officer final decision. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the contractor agrees that the Government may, following notice to the contractor, authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the Contracting Officer final decision, and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the Government agency's Director, Office of Contracts determines, following notice to the contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the contractor agrees that the Government may authorize release or disclosure of the technical data or computer software. Such determination may be made at any time after issuance of the final decision and will not affect the contractor's right to damages against the United States where its restrictive markings are ultimately upheld, or to pursue other relief, if any, as may be provided by law.

(g) Final Disposition of Appeal or Suit.

(1) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained:

(i) The restrictive marking on the technical data or computer software shall be struck, canceled, ignored, or corrected at the contractor's or subcontractor's expense; and

(ii) If the restrictive marking is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C.

§2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the contractor or subcontractor appeals or files suit, and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained:

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the contractor for payment of fees and other expenses (as defined in 28 U.S.C. §2412(d)(2)(A)) incurred by the contractor or subcontractor in defending the marking if the challenge by the Government is found not to have been made in good faith.

(h) Duration of Right to Challenge. The Government, when there are reasonable grounds, may review and challenge the validity of any restriction asserted by the contractor or subcontractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software delivered, to be delivered, or otherwise provided by the Contractor or subcontractor in the performance of a contract. During the period within three (3) years of final payment on a contract, or within three (3) years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination

to challenge any restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software:

- (1) Is publicly available;
  - (2) Has been furnished to the United States without restriction; or
  - (3) Has been otherwise made available without restriction.
- (i) Decision Not to Challenge. The absence of a challenge to an asserted restriction shall not constitute “validation” under this clause. Only the Contracting Officer’s final decision resolving a formal challenge by sustaining the validity of a restrictive marking, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction sustaining the assertion, constitutes “validation” as addressed in 10 U.S.C. §2321.
- (j) Privity of Contract. The contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings or assert restrictions on the Government’s right to use, modify, release, perform, display, or disclose technical data or computer software. However, neither this clause nor any action taken by the Government under this clause shall create or imply privity of contract between the Government and subcontractors.
- (k) Flowdown. The contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software, except contractual instruments for commercial items or commercial components.

**Cl.227-005 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (FEB 2011)**

(a) The terms “limited rights,” “restricted rights,” “special license rights,” and “Government purpose rights” are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Technical data or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI Marked with Limited or Restricted Rights Legends. The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person. Prior to providing limited rights technical data or restricted rights computer software as GFI, the Government shall ensure that:

(i) The receiving development contractor(s) or subcontractor(s) contract arrangements are subject to clauses Cl.209-005, *Protection of Information*, and Cl.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*; and

(ii) The receiving support contractor(s) or subcontractor(s) contract arrangements are subject to clauses Cl.209-008, *Support Contractor Corporate Non-Disclosure Agreement*, and Cl.227-005, *Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends*.

(2) GFI Marked with Government Purpose Rights Legends. The contractor shall use technical data or computer software received from the Government with Government purpose rights legends for Government purposes only. The contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such technical data or computer software for any commercial purpose, or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the contractor shall coordinate with the Contracting Officer before requiring the persons to whom disclosure will be made to complete and sign non-disclosure agreements including the same limitations included in this paragraph.

(3) GFI Marked with Special License Rights Legends. The contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license.

(c) Indemnification and Creation of Third Party Beneficiary Rights. The contractor agrees:

- (1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software; and
- (2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

#### **Cl.227-007 Rights in Bid or Proposal Information (JAN 2004)**

(a) Definitions. The terms “technical data” and “computer software” are defined in the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(b) Government Rights to Contract Award. By submission of its offer, the offeror agrees that the Government:

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person, including potential evaluators, unless that person has been authorized by the Contracting Officer to receive such information.

(c) Government Rights Subsequent to Contract Award. The contractor agrees:

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the contractor's bid or proposal within the Government.

(2) The Government's right to use, modify, reproduce, release perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the *Rights in Technical Data and Computer Software: Noncommercial Items* clause of this contract.

(d) Government-Furnished Information. The Government's rights with respect to technical data or computer software contained in the contractor's bid or proposal provided to the contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information Available Without Restrictions. The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party, or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. The contractor shall include this clause in all subcontracts or similar contractual instruments, and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

**CI.227-009 Deferred Delivery of Technical Data or Computer Software (MAY 2005)**

The Government may identify technical data or computer software (as defined in clause CI.227-001 or CI.227-002) for deferred delivery at any time during contract performance by listing such technical data or computer software in an attachment to Section J of this contract titled —Deferred Delivery.¶ The Government may require delivery of the items identified for deferred delivery up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later. This clause will be flowed down to all subcontractors.

**CI.227-010 Deferred Ordering of Technical Data or Computer Software (SEP 2013)**

(a) The Government may defer ordering technical data, computer software (as defined in clause CI.227-001 or CI.227-002), or other information not easily categorized (as defined in clause CI.227-002(d) and mutually agreed to by the contractual parties) that is generated during the performance of this contract for a period of up to three (3) years after either acceptance of all deliverables or contract termination, whichever is later.

(b) The categories of technical data, computer software, and other information not easily categorized that is subject to deferred ordering under this clause may be:

(1) Incorporated into the contract in the Contract Data Requirements List item that describes the Data Accession List attached to the contract; or

(2) Identified by the Government via a process agreed to by the parties and incorporated as an attachment to the contract in Section J prior to contract award.

(c) When the technical data, computer software, or other information not easily categorized is ordered, the contractor shall be reasonably compensated for converting the data or computer software into the prescribed form, for reproduction, and for delivery.

(d) The Government's rights to use said technical data and computer software shall be pursuant to the *Rights in Technical Data and Computer Software* clause(s) of this contract (CI.227-001 and CI.227-002).

(e) This clause shall be flowed down to all subcontractors.

**CI .227-011 Technical Data and Computer Software: Withholding of Payment (NOV 2007)**

(a) If technical data and computer software specified to be delivered under this contract are not delivered within the time specified by this contract, or are deficient upon delivery (including having unauthorized restrictive markings), the Contracting Officer shall, until such data and computer software are accepted by the Government, withhold all subsequent payments to the contractor until a reserve is established totaling (VARIABLE) [Insert “X percent of the total contract price” where “X” is a whole number between 3 and 10; or, to establish the lowest allowable withhold amount, insert: “3 percent of the total contract price or \$5 million, whichever is less”]. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contracting Officer determines that the contractor's failure to make timely delivery or to deliver the technical data or computer software without deficiencies arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) The withholding of any amount or subsequent payment to the contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. Use of this clause constitutes a determination by the Contracting Officer that the limitation established by FAR Clause 52.232-9, Limitation on Withholding of Payments, shall not apply to the amount withheld under this clause.

**CI.227-015 Data Requirements (FEB 2011)**

The contractor is required to deliver the data items listed on the Contract Data Requirements List, data items identified in and deliverable under any contract clause of FAR Part 52 and USG Part C52 made a part of this contract, and other data as may be specified in the Statement of Work, Statement of Objectives, Specification(s), or elsewhere in this contract.

**CI.228-004 Insurance (SEP 1996)**

The following kinds and minimum amounts of insurance are applicable in the performance of the work under this contract.

(a) **WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.** The contractor shall comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with contractor commercial operations that it would not be practical to require this coverage. Employer liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers compensation to be written by private carriers.

(b) **GENERAL LIABILITY INSURANCE.** Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence is required.

(c) **AUTOMOBILE LIABILITY INSURANCE.** Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) **AIRCRAFT PUBLIC AND PASSENGER LIABILITY INSURANCE.** When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

**CI.231-001 Supplemental Cost Principles (SEP 2013)**

The determination, negotiation, and allowability of costs under this contract shall be in accordance with Part 31 of the Federal Acquisition Regulation and with Part 31 of the appropriate Government Customer Acquisition Manual (*to be provided, if required*) in effect on the date of this contract.

**CI.244-002, Subcontract Reporting, Monitoring, Consent, and Notification (OCT 2014)**

(a) Definition. As used in this clause:

*Subcontract* means any contract or contractual action entered into by the prime contractor or a subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under this contract. It includes, but is not limited to purchase orders, transfers of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor, and work performed within a company but outside the main location, division, or facility under an Intra-Work Transfer Agreement (IWTA), Intra-Divisional Work Agreement (IDWA), Assist Work Authorization (AWA), or other similar arrangement.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies, materials, equipment, or services of any kind under this contract or a subcontract entered into in connection with this contract, regardless of dollar value.

(b) Flow-Down. The requirements of this clause must be included in all first-tier subcontracts directly chargeable to this contract, except for those subcontracts with US-owned companies to provide only unclassified commercial products and/or services on a fixed-price basis.

(c) Reporting. The prime contractor shall submit an annual report of all first- and second-tier subcontracts directly chargeable to this contract by 30 June each year, and a final close-out report within 90 days after contract completion. Individual fixed-price subcontracts under \$5,000 with US-owned companies to provide unclassified commercial products and/or services that will not be incorporated into

a contract deliverable (e.g., office supplies, travel, postage) need not be reported. Reports will be electronically uploaded into the Subcontractor Reporting Application on the Contractor Wide-Area Network (CWAN). Prime contractors without CWAN access will prepare their reports using a special Excel spreadsheet, and submit via email. Each subcontract report must include the following information in the format specified in the Subcontract Reporting Application and in the Excel spreadsheet:

- Prime Contract Number
- Subcontractor Tier
- Whether Subcontract Is Classified (Yes or No)
- Relationship Between Prime Contractor and Subcontractor
- Subcontractor Business Name, Street Address, City, State, Zip, and Country
- Subcontractor Data Universal Numbering System (DUNS) Number
- Subcontractor Contractor and Government Entity (CAGE) Code
- Subcontractor Business Type and Whether Woman-owned, Veteran-owned, Service-disabled Veteran-owned, and/or a HUBZone Small Business
- Subcontractor Country of Ownership
- DUNS Number of Company Awarding Subcontract
- Subcontractor's Parent Company Business Name
- Subcontract or Order Number
- Subcontract Value (Cumulative to Date)
- Subcontract Period of Performance (Start and End Dates)
- Subcontract Place of Performance (City, State, Country)
- Brief Description of Subcontract Effort
- Primary Subcontract Type
- Method Used to Select Subcontractor (Competitive or Sole-Source)

(d) Monitoring. The parties agree that the Government shall have the right to:

- (1) Review all documentation pertaining to source selections or other competitive sourcing activities, fact-finding, and negotiation sessions with or for subcontractors or potential subcontractors;
- (2) Observe any subcontractor test, verification, validation, shipment, or similar event;
- (3) Attend any subcontractor design review, milestone review, program review, or similar event. Unless expressly agreed to by the prime contractor and the Contracting Officer, the Government will not require a subcontractor event to be rescheduled due to the Government's inability to attend; and
- (4) Review and agree to the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices or satisfactory performance.

(e) Consent.

(1) All consent to subcontract requirements in FAR Clause 52.244-2 apply to this contract. In addition, the contractor shall obtain the Contracting Officer's written consent before awarding any subcontract with a value over \$50 million, or that exceeds \$3 million or five percent of prime contract value, whichever is less, to a company on a list provided by the Government Customer..

(2) Requests for consent to subcontract shall be submitted in writing to the Contracting Officer via NF 44.2701, *Request to Subcontract Checklist*.

(f) Notification. The prime contractor shall provide written notification to the Contracting Officer and COTR when a subcontract is expected to exceed the negotiated cost baseline by 15 percent.

(g) Privity. Government collection of subcontract information, surveillance of subcontractor performance, and consent to subcontract do not relieve the contractor of any responsibility for the effective management of all subcontracts and for the overall success of this contract. Actions taken under the authority of this clause do not establish privity of contract between the Government and subcontractors under this contract. The Government will not provide direction to or request action by any subcontractor except through the prime. However, all subcontracts must respond to direct requests for information from the Government, either directly or through the prime.

(h) Security. The Government reserves the right to direct the removal of any subcontractor under this contract on the basis of Government security concerns. The contractor shall be responsible for any lack of due diligence or negligence in the selection of a subcontractor, and will not be entitled to an equitable adjustment if the Contracting Officer determines that the Government's need to remove the contractor for security reasons is the fault of the contractor or subcontractor.

**CI.245-001 CONTRACT-ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING, AND ADMINISTRATION (DEC 2011)**

(a) General Requirements. The Seller shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR Part 45 and appropriate Government agency requirements. The terms "Government property," "contract accountable property," "Government equipment," and "contractor-acquired property/material" are used interchangeably and equally within this clause. All items provided to the contractor, including equipment, and facilities are equally considered to be Government property.

(b) Property Analyst. The Contracting Officer has delegated property administration authority to a Property Analyst. Please contact Buyer for appropriate access to the listing.

(c) Seller Property Representatives. The Seller shall provide the name, address, and telephone number of the company official responsible for establishing and maintaining control of Government property under this contract to the Buyer within thirty (30) days after receipt of this contract.

(d) Government Property List. The Government Property List that may be available under this contract will identify all Government property offered to the Seller on a no-charge-for-use basis to perform this contract with the dates of availability for each item. The Buyer will provide update the list as changes occur so that it always represents the definitive list of all Government property authorized for transfer to the Seller under this contract, whether or not the items have actually been transferred. The Government Property List is not intended to include all Government property accountable to this contract; the inventory of contract-accountable Government property is maintained in the Consolidated Contractor Database (CCD) based on the contractor's quarterly property reports.

(e) Property Transfers. Working through the Buyer, the Seller must obtain approval of the Contracting Officer or designee, before property transfers occur, except for property with a unit cost less than \$10,000 transferred within an approved Material Management and Accounting System (MMAS). Transfers between contracts must be documented in a DD Form 250, DD Form 1149, Contracting Officer letter, contract modification, or email. This documentation shall serve as the only record necessary to document transfers.

(f) Government Property Accountable to Other Contracts. Working through the Buyer, the Seller may use Government property accountable to other agency contracts in their possession for the performance of this contract on a rent-free, non-interference basis after receiving written approval from the Contracting Officer of the other contract. Use is authorized on the basis that it will not interfere with contractor performance of the agency contracts under which the property originally was furnished or acquired. Working through the Buyer, the Seller may use Government property in their possession accountable to other agency contracts after receiving written approval from the Contracting Officer of the other contracts. Such use shall be on a rent-free, non-interference basis, shall not interfere with performance of the Government contracts under which the property originally was furnished or acquired, and shall be in accordance with the terms and conditions of those contracts as well as the appropriate Contracting Officer's approval letter. This paragraph does not apply to Government-furnished material.

(g) Title. Title to all Government-furnished property remains vested with the Government. Working through the Buyer, upon completion or termination of this contract, the Seller shall submit to the Contracting Officer a list of all property acquired under the contract during the contract period. The list shall describe each item, including the manufacturer, model number, date acquired, cost, and condition,



and shall be submitted to the Property Analyst (in coordination with the Buyer) within 60 calendar days after completion or termination of the contract.

(h) Promotional Items. The Seller shall promptly identify to the Contracting Officer any promotional items (stand-alone or otherwise) received in conjunction with their purchases on behalf of the Government. Upon receipt and adjudication by the Government, the Seller shall follow the direction of the Contracting Officer with regard to the promotional items.

(i) Audits and Analyses. The agency shall audit/analyze the contractor's processes, controls, policies, accountability, and administration of Government property. The Property Analyst will perform such audits/analyses in accordance with the procedures in its *Contract-Accountable Property Manual*. Audit/analysis teams will be composed of property analysts and subject matter experts in contracting, logistics, accounting, and finance.

(j) Reporting.

(1) Quarterly Reports. Working with the Buyer, the Seller shall submit quarterly reports in the method prescribed by the Government of all property accountable to this contract and in the possession of the Seller or its subcontractors/vendors. Reports shall be submitted not later than 15 March, 15 June, 15 September, and 15 December, and cover the period up to the last day of the month preceding the reporting date. Each report must be submitted electronically (coordinate with Buyer), with full line-item detail uploaded into the CCD. Each item must include a data field containing the appropriate Program Code to identify the program under which the item was originally acquired, or to designate the item as "non-program." For each non-program item with a value of \$100,000 or more acquired or manufactured during the reporting period, the contractor must also upload an electronic copy of the invoice or other valuation documentation in accordance with (coordinate with Buyer). The Seller shall submit a final report within 30 days after disposition of all contract-accountable property. Changes to these reporting requirements, including changes in frequency, style, substance, and level of detail, may be made at any time during the performance of this contract at no change in contract value. Failure to provide required reporting may result in termination of this contract, suspension of payment by the Buyer or its Government customer, until required reporting is received, or other action as deemed appropriate by the Contracting Officer.

(2) Annual Inventory Reports. The Seller shall submit the results of their physical inventory (to include all inventories performed by the prime contractor and each subcontractor) to the Buyer within 30 days after inventory completion.

(k) Special Test Equipment. The Seller must obtain Buyer approval before acquiring or fabricating special test equipment at Government expense unless the equipment is itemized in this contract.

(l) Flowdown. The Seller shall include this clause in all subcontracts. When security issues preclude verbatim use of this clause, the Seller shall use a revised version which includes all the requirements of the original clause.

### 3. Commercial Items

If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:

**52.203-13 Contractor Code of Business Ethics and Conduct** (APR 2010). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (AUG 2013). Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals is or is not debarred,

suspended, or proposed for debarment by the Federal Government. This clause does not apply to contracts where Seller is providing commercially available off-the shelf items.

**52.222-26 Equal Opportunity (MAR 2007).**

**52.222-35 Equal Opportunity for Veterans.** (JUL 2014). This clause applies only if this contract is \$100,000 or more.

**52.222-36 Equal Opportunity for Workers with Disabilities** (JUL 2014). This clause applies only if this contract exceeds \$15,000.

**52.222-37 Employment Reports on Veterans** (JUL 2014). This clause applies if this contract is \$100,000 or more.

**52.222-40 Notification of Employee Rights Under the National Labor Relations Act.** (DEC 2010).

**52.222-41 Service Contract Labor Standards** (MAY 2014). This clause applies only if this contract is subject to the Act.

**52.222-50 Combating Trafficking in Persons** (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

**52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving** (AUG 2011).

**52.232-39 Unenforceability of Unauthorized Obligations** (JUN 2013).

**52.244-6 Subcontracts for Commercial Items** (OCT 2014). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

**52.245-1 Government Property** (APR 2012). This clause applies if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer.

**CI.219-001 Utilization of Small Business Concerns (DEC 2011)**

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal Agency, including contracts and subcontracts for subsystems, assemblies, components and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the Contracting Officer or his representative as may be necessary to determine the extent of the contractor's compliance with this clause.

(c) Definitions. As used in this contract—

—HubZone Small Business Concern<sup>¶</sup> means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

—Service-disabled Veteran-owned Small Business Concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) —Service-disabled Veteran— means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C.101(16).

—Small Business Concern— means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

—Small Disadvantaged Business Concern— means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Central Contractor Registration (CCR) Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meet the SDB eligibility criteria of 13 CFR 124.1002.

—Veteran-owned Small Business Concern— means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C.101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

—Women-owned Small Business Concern— means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the CCR database at <http://www.sba.gov/hubzone>.