

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

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DTSA20-02-C-00002

The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for otherwise elsewhere in this contract, the only FAR clauses applicable to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1, are the clauses listed in FAR 52.244-6. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.

Restrictions to Subcontractor Sales to the Government (JUL 95). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 95). This clause applies only if the contract exceeds \$100,000. Buyer may withhold 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.

52.203-8 Cancellation, rescission, and recovery of funds for illegal or improper activity (JAN 97). 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 (JAN 97). This clause applies only if this contract \$100,000. 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 Regarding Payments to Influence Certain Federal Transactions (APR 91)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions. This clause applies only if this Contract exceeds \$100,000 (JUN 97). Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Buyer) directly to the PCO for the prime contract. Buyer will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

52.204-2 Security Requirements (AUG 96) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified material is required.

52.211-15 Defense Priority and Allocation Requirements (SEP 90). This clause is applicable if a priority rating is noted in this contract.

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52.215-2 Audit and Records – Negotiation (JUN 99). This clause applies only if this contract exceeds \$100,000 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.

52.215-14 Integrity of Unit Prices (OCT 97) (excluding paragraph (b)).

52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

52.215-18 Reversion or adjustment of plans for postretirement benefits other than pensions (PRB) (OCT 97). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

52.215-19 -- Notification of Ownership Changes (OCT 97). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (OCT 97). This clause applies only if this contract exceeds \$500,000. "Contracting Officer" shall mean Buyer in subparagraph (a).

52.219-8 Utilization of Small Business Concerns (OCT 00)

52.219-9 Small Business Subcontracting Plan (JAN 02). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer.

52.222-21 Prohibition of Segregated Facilities (FEB 1999)

52.222-26 Equal Opportunity (FEB 99) (subparagraph (b)(1) through (11)).

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52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 01). This clause applies only if this contract exceeds \$10,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 98). This clause applies only if this contract exceeds \$10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 01). This clause applies only if this contract is for \$25,000 or more.

52.223-14 Toxic Chemical Release Reporting (OCT 00) (excluding subparagraph (e)). This clause applies only if this contract was competitively awarded, exceeds \$100,000 (including all options), is not for commercial items as defined in FAR Part 12 and Seller has a SIC designation of major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33.

52.225-13 Restrictions on Certain Foreign Purchases (JUL 00)

Authorization and Consent (JUL 95)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 96). A copy of each notice sent to the Government will be sent to Buyer. This clause applies only if this contract exceeds \$100,000.

52.227-14 Rights in Data – General (JUN 87). This clause applies only if data will be produced, furnished, or acquired under this contract.

52.228-5 Insurance - Work on Government Installation (JAN 97). Seller shall provide and maintain insurance as set forth in this contract.

State of New Mexico Gross Receipts and Compensating Tax (OCT 88). This clause applies only if (1) this contract is a cost-reimbursement contract; (2) this contract directs or authorizes Seller to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the subcontractor, and (3) this contract is for services to be performed in whole or in part in the State of New Mexico.

52-244-6 Subcontracts for Commercial Items and Commercial Components (DEC 01)

52.245-2 Government Property (DEC 89), Alt. I (APR 84)

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The following Transportation Acquisition Regulations (TAR) Clauses are incorporated by reference and apply to the extent indicated. In all of the following clauses, “Contractor” and “Offeror” mean Seller.

1252.219-70 Small Business and Small Disadvantaged Business Subcontracting Reporting (JUN 1997)

1252.237-70 Qualifications of Employees (OCT 94)

1252.237-72 Prohibition on Advertising (JAN 96)

1252.242-72 Dissemination of Contract Information (OCT 94)

1252.242-73 Contracting Officer's Technical Representative (OCT 94)

1252.245-70 Government Property Reports (OCT 94)

NON-PERSONAL SERVICES

- (a) As stated in the Federal Register, Volume 57, No. 190, page 45096, dated September 30, 1992, Policy Letter on Inherently Governmental Functions, no personal services shall be performed under this contract. No Contractor employee will be directly supervised by the Government. All individual employee assignments, and daily work direction, shall be given by the applicable employee supervisor. If the Contractor believes any Government action or communication has been given that would create a personal services relationship between the Government and any Contractor employee, the Contractor shall promptly notify the CO of this communication or action.
- (b) The Contractor shall not perform any inherently Governmental actions under this contract. No Contractor employee shall hold him or herself out to be a Government employee, agent, or representative. No Contractor employee shall state orally or in writing at any time that he or she is acting on behalf of the Government. In all communications with third parties in connection with this contract, Contractor employees shall identify themselves as Contractor employees and specify the name of the company for which they work. In all communications with other Government Contractors in connection with this contract, the Contractor employee shall state that they have no authority to in any way change the contract and that if the other Contractor believes this communication to be a direction to change their contract, they should notify the CO for that contract and not carry out the direction until a clarification has been issued by the CO.
- (c) Nothing in this clause shall limit the Government's rights in any way under any other provision of the contract, including those related to the Government's right to inspect and accept the services to be performed under this contract.