

**1. FAR CLAUSES.** When the materials or products furnished are for use in connection with a U.S. Government prime contract or subcontract, in addition to TC-001, General Terms and Conditions of Purchase, the following provisions shall apply, as required by the terms of the prime contract or by operation of law or regulation. The effective version of each FAR provision shall be the same version as that which appears in Buyer's prime contract or higher-tier subcontract under which this Order is a subcontract. In the event of a conflict between these FAR provisions and TC-001, the FAR provisions shall control.

The following clauses set forth in the FAR in effect as of the date of the prime contract are incorporated herein by reference. In all clauses listed herein, the terms "Government," "Contracting Officer," and "Contractor" shall be revised to suitably identify the contracting parties herein and effect the proper intent of the provision except where further clarified or modified below. "Subcontractor," however, shall mean "Seller's Subcontractor" under this Purchase Order.

Except as noted, the following FAR clauses are applicable to all solicitations and contracts:

- 52.204-2 Security Requirements
- 52.211-15 Defense Priority And Allocation Requirements
- 52.215-5 Facsimile Proposals
- 52.223-3 Hazardous Material Identification And Material Safety Data
- 52.227-1 Authorization And Consent - Alternate I
- 52.227-10 Filing Of Patent Application - Classified Subject Matter
- 52.227-11 Patent Rights Retention By The Contractor (Short Form)
- 52.232-25 Prompt Payment (not applicable to solicitations and contracts for commercial items)
- 52.233-1 Disputes - Alternate I (not applicable to solicitations and contracts with foreign governments, agencies of foreign governments, international organizations, or a subsidiary body of an international organization)
- 52.233-3 Protest After Award
- 52.233-4 Applicable Law For Breach Of Contract Claim
- 52.244-6 Subcontracts For Commercial Items (not applicable to solicitations and contracts for commercial items)
- 52.245-18 Special Test Equipment
- 52.245-19 Government Property Furnished "As-Is"
- 52.247-1 Commercial Bill Of Lading Notations (applicable when delivery items will be f.o.b. origin)
- 52.247-63 Preference For U.S. Flag Carriers
- 52.252-6 Authorized Deviations in Clauses

Unless otherwise exempt, the following FAR clauses are applicable to all solicitations and contracts:

- 52.215-10 Price Reduction For Defective Cost Or Pricing Data
- 52.215-11 Price Reduction For Defective Cost Or Pricing Data - Modifications
- 52.215-12 Subcontractor Cost Or Pricing Data
- 52.215-13 Subcontractor Cost Or Pricing Data - Modifications
- 52.215-15 Pension Adjustments And Asset Reversions
- 52.215-18 Reversion Or Adjustment Of Plans For Post-Retirement Benefits (PRB) Other Than Pensions
- 52.215-19 Notification Of Ownership Changes
- 52.215-21 Requirements For Cost Or Pricing Data Or Information Other Than Cost or Pricing Data - Modifications

The following FAR clause is applicable to contracts of any value awarded to an individual:

- 52.223-6 Drug-Free Workplace

The following FAR clauses are applicable to all solicitations and contracts above the micro-purchase threshold:<sup>1</sup>

- 52.222-3 Convict Labor
- 52.225-13 Restrictions On Certain Foreign Purchases
- 52.232-23 Assignment Of Claims - Alternate I

The following FAR clauses are applicable to all solicitations and contracts over \$10,000:

- 52.222-21 Prohibition Of Segregated Facilities
- 52.222-26 Equal Opportunity
- 52.222-36 Affirmative Action For Workers With Disabilities

The following FAR clauses are applicable to all solicitations and contracts over \$25,000:

- 52.209-6 Protecting The Government's Interest When Subcontracting With Contractors Debarred, Suspended, Or Proposed For Debarment
- 52.222-35 Equal Opportunity For Special Disabled Veterans, Veterans Of The Vietnam Era, And Other Eligible Veterans
- 52.222-37 Employment Reports On Special Disabled Veterans, Veterans Of The Vietnam Era, And Other Eligible Veterans

Except as noted, the following FAR clauses are applicable to all solicitations and contracts over the simplified acquisition threshold:<sup>2</sup>

- 52.203-12 Limitation On Payments To Influence Certain Federal Transactions
- 52.219-14 Limitations On Subcontracting (applicable to solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business)
- 52.222-2 Payment For Overtime Premiums (applicable to cost-reimbursement contracts; not applicable to cost-plus-incentive-fee contracts that provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent)
- 52.223-14 Toxic Chemical Release Reporting (not applicable for the acquisition of commercial items)
- 52.203-3 Gratuities (not applicable to solicitations and contracts for personal services)

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<sup>1</sup> "Micro-purchase threshold" means \$3,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the micro-purchase threshold is (i) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and (ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

<sup>2</sup> "Simplified acquisition threshold" means \$150,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 428a), the term means (1) \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and (2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

- 52.203-5 Covenant Against Contingent Fees (not applicable to solicitations and contracts for commercial items)
- 52.203-6 Restrictions On Subcontractor Sales To The Government (Alternate I for the acquisition of commercial items)
- 52.203-7 Anti-Kickback Procedures (not applicable to solicitations and contracts for commercial items)
- 52.203-8 Cancellation, Rescission, And Recovery Of Funds For Illegal Or Improper Activity (not applicable to solicitations and contracts for commercial items)
- 52.203-10 Price Or Fee Adjustment For Illegal Or Improper Activity (not applicable to solicitations and contracts for commercial items)
- 52.204-4 Printed Or Copied Double-Sided On Recycled Paper
- 52.215-2 Audit And Records - Negotiation (not applicable to solicitations and contracts for commercial items)
- 52.215-14 Integrity Of Unit Prices (not applicable to solicitations and contracts for commercial items)
- 52.219-4 Notice Of Price Evaluation Preference For HUBZone Small Business Concerns
- 52.219-8 Utilization Of Small Business Concerns (not applicable to solicitations and contracts for personal services or solicitations and contracts in which the work, in its entirety, will be performed outside of the United States)
- 52.223-6 Drug-Free Workplace (not applicable for the acquisition of commercial items or any part of a contract performed outside of the United States)
- 52.227-2 Notice And Assistance Regarding Patent And Copyright Infringement
- 52.242-13 Bankruptcy
- 52.243-7 Notification Of Changes
- 52.244-2 Subcontracts - Alternate I (applicable to letter contracts, fixed-price contracts under which unpriced contract actions are anticipated, time-and-materials contracts, and labor-hour contracts)
- 52.244-5 Competition In Subcontracting (not applicable to firm-fixed-price contracts awarded on the basis of adequate price competition or whose prices are set by law or regulation, time-and-materials contracts, labor-hour contracts, or architect-engineer contracts)
- 52.246-23 Limitation Of Liability
- 52.246-25 Limitation Of Liability - Services

Except as noted, the following FAR clauses are applicable to all solicitations and contracts exceeding \$650,000:

- 52.219-9 Small Business Subcontracting Plan - Alternate II
- 52.219-16 Liquidated Damages - Subcontracting Plan
- 52.242-3 Penalties For Unallowable Costs (not applicable to fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items)
- 2.215-22 Limitations on Pass-Through Charges—Identification of Subcontract Effort.
- 52.215-23 Limitations on Pass-Through Charges

Except as noted, the following FAR clauses are applicable to cost-reimbursement contracts:

- 52.216-7 Allowable Cost And Payment
- 52.222-2 Payment For Overtime Premiums (applicable to contracts expected to exceed the simplified acquisition threshold; not applicable to

cost-plus-incentive-fee contracts that provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent)

- 52.228-7 Insurance Liability To Third Persons (not applicable to contracts for construction or architect-engineer services)
- 52.232-20 Limitation Of Cost
- 52.232-22 Limitation Of Funds
- 52.232-25 Prompt Payment - Alternate 1 (applicable to contracts for services)
- 52.233-3 Protest After Award - Alternate I
- 52.242-1 Notice Of Intent To Disallow Costs
- 52.243-2 Changes - Cost-Reimbursement - Alternate V (applicable to contracts for supplies)
- 52.244-2 Subcontracts - Alternate I
- 52.247-1 Commercial Bill Of Lading Notations
- 52.249-6 Termination (Cost-Reimbursement) (not applicable to research and development contracts with educational or nonprofit institutions on a no-fee basis)
- 52.249-14 Excusable Delays

The following FAR clause is applicable to cost-plus-fixed-fee contracts:

- 52.216-8 Fixed-Fee

The following FAR clause is applicable to fixed-price incentive contracts:

- 52.242-1 Notice Of Intent To Disallow Costs

The following FAR clauses are applicable to time-and-material contracts:

- 52.249-14 Excusable Delays

The following FAR clauses are applicable to contracts providing for price redetermination:

- 52.242-1 Notice Of Intent To Disallow Costs

The following FAR clauses are applicable to labor-hour contracts:

- 52.249-14 Excusable Delays

The following FAR clauses are applicable for solicitations and contracts that provide for performance, in whole or in part, on a Federal facility:

- 52.223-5 Pollution Prevention And Right-To-Know Information
- 52.223-10 Waste Reduction Program
- 52.237-2 Protection Of Government Buildings, Equipment And Vegetation (not applicable to construction contracts)

**2. CERTIFICATIONS.** The Offeror, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award.

- 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (over the simplified acquisition threshold)
- 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters (over \$25,000)

- 52.222-22 Previous Contracts and Compliance Reports (over \$10,000)  
52.223-13 Certification of Toxic Chemical Release Reporting (over \$100,000)

### **3. ADDITIONAL CLAUSES**

#### **3.1 COST ACCOUNTING STANDARDS** (applicable if noted in the Purchase Order)

- 52.230-2 Cost Accounting Standards  
52.230-3 Disclosure and Consistency of Cost Accounting Standards  
52.230-6 Administration of Cost Accounting Standards

Seller shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting Cost Accounting Standards, FAR 52.230-2 and Administration of Cost Accounting Standards, FAR 52.230-6, provided Seller shall not be required to disclose to Buyer such communications containing information which is legally privileged and confidential to the Seller. In addition to any other remedies provided by law or under this Purchase Order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3, 52.230-5, or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses.

#### **3.2 TRUTH IN NEGOTIATIONS** (Cost and Pricing Data)

Unless exempt, Seller shall submit a FAR Part 15 compliant cost proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, Seller must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing Data.

1. *Indemnification.* If any price (including profit or fee) negotiated in connection with the prime contract between the Government and the Buyer or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the Seller in connection with any proposal submitted by the Buyer relating to said contract or in connection with this Purchase Order was not accurate, complete, or current, the Seller shall indemnify the Buyer in the amount of said reduction.

The phrase "cost or pricing data" as used herein shall be deemed to include any such data which related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the Seller or which it procured by submission of, in connection with the aforesaid proposal or this Purchase Order in support of its cost estimate.

If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable and shall pay the Buyer at the time such overpayment is repaid:

- a. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Buyer is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- b. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the Seller knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

2. *Cost or Pricing Data for Changes.* Prior to the pricing of any change or other modification to this Purchase Order which involves increases and/or decreases in costs plus applicable profit expected to exceed the threshold for submission of cost or pricing data, subcontractors shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this Purchase Order, Seller shall obtain such data.