

## ADDITIONAL STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS

**SPECIAL U.S. GOVERNMENT PROVISIONS.** The provisions set forth hereunder shall apply in addition to those terms in the Purchase Order/Agreement (hereinafter the “AGREEMENT”) or attached/referenced in the AGREEMENT and incorporated by reference. Seller hereby agrees to flow down the applicable FAR, DFARS, or other agency clauses to its lower-tier subcontractors as required.

1. **Audits.** Seller agrees that its books and records and its plans or any such part thereof as may be engaged in the performance of this AGREEMENT, shall at all reasonable times be subject to inspection and audit by any person designated by the head of any executive department of the U. S. Government or any representative of Buyer.
2. **Quality Control.** Except as otherwise provided in this AGREEMENT, Seller’s system of Quality Control during the performance of this AGREEMENT shall be in accordance with the specifications as are required by Buyer’s prime contract or higher tier AGREEMENT.
3. **Modification.** Seller agrees it will negotiate AGREEMENT modification(s) in good faith to incorporate additions, deletions, and changes to the clauses set forth below if Buyer deems them necessary to comply with Buyer’s Contract or modifications to Buyer’s Contract. If any such modification to this Purchase Order causes an increase or decrease in the cost, or the time required for the performance, of any part of the work under this AGREEMENT, an equitable adjustment shall be made pursuant to the “Changes” clause of this Purchase Order. Seller shall proceed immediately to perform this AGREEMENT as changed.
4. **Government/Buyers Property.** Seller shall maintain and administer a program for the maintenance, repair, protection, and preservation of Buyer and Government property in accordance with FAR 52.245-1. Seller assumes risk of and shall be responsible for any loss or damage to Government property except for reasonable wear and tear and except to the extent that such property is incorporated in the Goods delivered under this AGREEMENT. The Buyer or Government makes no warranty, express or implied, with respect to the serviceability and or suitability of property of performance of this AGREEMENT. Any repairs, replacements or refurbishments shall be at the Seller’s expense. Upon completion of this Order or at such earlier times as Buyer may request, Seller shall submit, in acceptable form, inventory schedules covering all items of Buyer and Government property pertaining to this AGREEMENT. In addition, upon the request of the Buyer, the Seller may be required to furnish a list of all Buyer and Government property required to support any follow-on requirement. This list shall be in an acceptable format and identify the category, quantity and acquisition cost. To the extent that such use will not interfere with Seller's performance of this or other AGREEMENTS from Buyers, this clause shall not limit the use by the Seller of property to which the Government has title in the production of end items on direct Government Order; however, nothing herein will be deemed to contravene the rights of the Government under FAR 52.245-1.
5. **Clauses.** The following clauses of the FAR, DFARS, or other agency clauses are incorporated herein by reference, as applicable, and made part hereof with the same force and effect as if they were given in full text, including any notes following the clause citations, to this AGREEMENT. The clauses in effect in the Buyer’s Contract on the date of this Purchase Order are incorporated by reference and any changes, if necessary, to each such clause, including dates, shall be made to be consistent to the requirements of Buyer's customer. Upon Seller's written request, Buyer's Purchasing Representative will make their full text available. Also, the full text of a FAR, DFARS, or agency clause may be accessed electronically at this addresses: <https://www.acquisition.gov> or <https://www.acq.osd.mil/dpap/dars/index.html>. In all clauses listed herein, terms shall be revised to suitably identify the party to establish Seller’s obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under its prime contract. Whenever said clauses include a requirement for the resolution of disputes

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between the Parties in accordance with the FAR “Disputes” clause, the dispute shall instead be disposed of in accordance with the clause entitled “Disputes/Claims” in the Standard General Terms and Conditions for Goods & Services. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term “Government” and equivalent phrases shall mean “Buyer”, the term “Contracting Officer” shall mean “Buyer’s Purchasing Representative”, the term “Contractor” or “Offeror” shall mean “Seller”, “Subcontractor” shall mean “Seller’s Subcontractor” under this AGREEMENT, and the term “Contract” shall mean this “AGREEMENT”. For the avoidance of doubt, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 and (2) when title to property is to be transferred directly to the Government. Nothing in this AGREEMENT grants Seller a direct right of action against the Government. If any of the following FAR, DFARS, or agency clauses do not apply to this AGREEMENT, such clauses are considered to be self-deleting. The column appearing in Table One and Two below titled “Conditions” identifies the triggering requirements that make each Clause applicable to the AGREEMENT. Buyer’s notations in this Column are provided for reference only and shall not serve to render an applicable Clause inapplicable where the terms of the Clause differ from Buyer’s notation. Seller is responsible for confirming the applicability of each Clause while performing this AGREEMENT. Seller shall incorporate into each lower tier contract issued in support of this AGREEMENT all applicable FAR, DFARS, or agency clauses in accordance with the flow down requirements specified in such clauses, either verbatim, or in substance and by incorporation-by-reference or otherwise as appropriate.

6. FAR and DFARS Representations and Certifications. Buyer and Seller acknowledge that certain FAR and DFARS below concern representations and certifications by the offeror only to the United States Government for the solicitation or response to the RFP. Seller agrees to comply with such requirements as if it was the prime contractor and will reasonably assist Buyer in confirming or answering such FAR and DFARS representations and certifications, including any follow-on questions by the United States Government or its respective agencies or departments. Seller acknowledges it has had the opportunity to inquire as to the clauses present in Buyer’s contract and agrees to be bound to such clauses in the manner listed below.
7. Commercial Items/ Non-Commercial Items. If Seller is providing Buyer with Products that Seller determines are Commercial Items or COTS (Commercial Item Off the Shelf) as those terms are defined within FAR 2.101, then Seller shall adhere to all applicable FAR and DFARS clauses that appear in Table One below. If Seller is providing Buyer with Products that Seller determines are Non-Commercial Items, as that term is defined within FAR 2.101, the Seller shall adhere to all applicable FAR and DFARS clauses that appear in Table Two below. Where Seller is providing Buyer with Products that are a mix of Commercial Items and/or COTS, and Non-Commercial Items Seller shall adhere to all applicable FAR and DFARS clauses that appear in Table Two below. Clauses appearing below Table One and Table Two, written in full text, shall be applicable unless otherwise stated within each such clause.
8. This Project is subject to FAR 52.211-15. The DPAS Rating for this Project: **DOA6**

Conditions Legend
<b>ALL</b> – clause applies to all orders
<b>SAT</b> – Applicable to orders greater than \$250,000.00 (or the simplified acquisition threshold)
<b>SB</b> - Applicable to small business concern
<b>&gt;15k</b> - Applicable to orders greater than \$15,000.00
<b>&gt;35k</b> - Applicable to orders greater than \$35,000.00
<b>&gt;150k</b> - Applicable to orders greater than \$150,000.00
<b>&gt;500k</b> - Applicable to orders greater than \$500,000.00

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<b>&gt;700k</b> - Applicable to orders greater than \$700,000.00
<b>&gt;750k</b> - Applicable to orders greater than \$750,000.00
<b>&gt;1M</b> - Applicable to orders greater than \$1,000,000.00
<b>&gt;2M</b> - Applicable to orders greater than \$2,000,000.00
<b>&gt;6M</b> - Applicable to orders greater than \$6,000,000.00
<b>&gt;10M</b> - Applicable to orders greater than \$10,000,000.00
<b>GP</b> - Applicable in order where government property is acquired or furnished.
<b>Government installation</b> - Applicable in order that requires work on a government installation.
<b>DBA Act</b> – Where the Defense Base Act is applicable.
<b>Outside US</b> - Applicable in order in areas of combat operations, or other military operations
<b>Foreign</b> - Applicable in order in designated operational areas during contingency operations, humanitarian or peacekeeping or other military operations. Also while supporting diplomatic or consular operations
<b>SI</b> - Applicable in order for containing sensitive information, have access to a system of records; Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or Design, develop, maintain, or operate a system of records.
<b>HUBZONE</b> - need to be certified.
<b>FPA</b> - Applicable in order for fixed price acquisitions.
<b>Price reductions</b> - Applicable in order when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor for the pricing of contract modifications.
<b>Government unique standards</b> - Applicable in order when the contract uses these standards when the agency uses transaction-based reporting.
<b>Federal Controlled Facility</b> - Applicable in order for when the subcontractor's employees are required to have routine physical access to a Federally controlled facility and/or routine access to a Federally controlled information system.
<b>Motor Carrier</b> – Applicable in order for carriage in which a motor carrier, broker or freight forwarder will provide or arrange truck transportation services the provide for a full related adjustment.
<b>!!</b> - Applicable in order where repairable or consumable parts identified as critical safety items, systems and subsystems, assemblies and subassemblies integral to a system or all of the maintenance and repair into those items.
<b>Welded shipboard</b> - Applicable in order for items containing welded shipboard anchor and mooring chain four inches or less in diameter.
<b>AA&amp;E</b> - Applicable in order where development, production, manufacture or purchase of AA&E or when AA&E will be provided as Government furnished property
<b>RAF</b> - Applicable in order where funded in whole or in part with Recovery Act funds

**TABLE ONE (COMMERCIAL ITEMS AND COTS)**

Condition	Regulatory Cite	Title	Date
All	DFARS 252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material.	(DEC 1991)
>2M	DFARS 252.215-7010	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	(MAY 2024)
All	DFARS 252.225-7000	Buy American—Balance of Payments Program Certificate.	(FEB 2024)
All	DFARS 252.225-7001	Buy American and Balance of Payments Program.	(FEB 2024)

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All	DFARS 252.225-7002	Qualifying Country Sources as Subcontractors.	(MAR 2022)
All	DFARS 252.225-7003	Report of Intended Performance Outside the United States and Canada—Submission with Offer.	(JAN 2023)
All items containing specialty metals	DFARS 252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals.	(JAN 2023)
All	DFARS 252.225-7030	Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.	(DEC 2006)
All	DFARS 252.225-7033	Waiver of United Kingdom Levies.	(APR 2003)
All subcontracts when subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States	DFARS 252.225-7040	Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.	(OCT 2023)
All	DFARS 252.225-7052	Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten.	(MAY 2024)
All	DFARS 252.225-7059	Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation.	(JUN 2023)
All	DFARS 252.225-7060	Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.	(JUN 2023)

**TABLE TWO (NON-COMMERCIAL ITEMS)**

Condition	Regulation	Title	Date
All	FAR 52.249-2	Termination for Convenience of the Government (Fixed Price).	(APR 2012)
All	FAR 52.203-3	Gratuities.	(APR 1984)
SAT	FAR 52.203-6	Restrictions on Subcontractor Sales to the Government.	(JUN 2020)
>150k	FAR 52.203-7	Anti-Kickback Procedures.	(JUN 2020)
All	FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity.	(MAY 2014)
>150k	FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions.	(JUN 2020)
>6M/ Performance period of 120 days or more	FAR 52.203-13	Contractor Code of Business Ethics and Conduct.	(NOV 2021)
>6M	FAR 52.203-14	Display of Hotline Poster(s).	(NOV 2021)
All	FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.	(JAN 2017)
SI	FAR 52.204-2	Security Requirements.	(MAR 2021)
Federal Controlled Facility	FAR 52.204-9	Personal Identity Verification of Contractor Personnel.	(JAN 2011)
Fed contract information in system	FAR 52.204-21	Basic Safeguarding of Covered Contractor Information Systems.	(NOV 2021)
All	FAR 52.204-30	Federal Acquisition Supply Chain Security Act Orders—Prohibition.	(DEC 2023)

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>35k	FAR 52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	(JAN 2025)
All	FAR 52.211-5	Material Requirements.	(AUG 2000)
All	FAR 52.211-15	Defense Priority and Allocation Requirements.	(APR 2008)
>2M	FAR 52.214-26	Audit and Records-Sealed Bidding.	(JUN 2020)
All	FAR 52.214-27	Price Reduction for Defective Certified Cost or Pricing Data-Modifications-Sealed Bidding.	(JUN 2020)
>2M	FAR 52.214-28	Subcontractor Certified Cost or Pricing Data-Modifications-Sealed Bidding.	(JUN 2020)
SAT	FAR 52.215-14	Integrity of Unit Prices.	(NOV 2021)
All that meet applicability of FAR 15.408(g)	FAR 52.215-15	Pension Adjustments and Asset Reversions.	(OCT 2010)
All that meet applicability of FAR 15.408(J)	FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	(JUL 2005)
All that meet applicability of FAR 15.408(k)	FAR 52.215-19	Notification of Ownership Changes.	(OCT 1997)
SAT	FAR 52.215-2	Audit and Records-Negotiation.	(JUN 2020)
SAT unless working with DOD then >2M	FAR 52.215-23	Limitations on Pass-Through Charges.	(JUN 2020)
HUBZONE	FAR 52.219-8	Utilization of Small Business Concerns.	(JAN 2025)
>750k	FAR 52.219-9	Small Business Subcontracting Plan.	(JAN 2025)
>750k	FAR 52.219-9	Small Business Subcontracting Plan - Alternate II.	(NOV 2016)
All	FAR 52.222-1	Notice to the Government of Labor Disputes.	(SEP 2021)
>15k	FAR 52.222-20	Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000 (NOTE: (clause was previously titled Walsh-Healey Public Contracts Act).	(JUN 2020)
All	FAR 52.222-21	Prohibition of Segregated Facilities.	(APR 2015)
All	FAR 52.222-26	Equal Opportunity.	(SEPT 2016)
>150k	FAR 52.222-35	Equal Opportunity for Veterans.	(JUN 2020)
>15k	FAR 52.222-36	Equal Opportunity for Workers with Disabilities.	(JUN 2020)
>150k	FAR 52.222-37	Employment Reports of Veterans.	(JUN 2020)
All	FAR 52.222-4	Contract Work Hours and Safety Standards - Overtime Compensation.	(MAY 2018)
>10k	FAR 52.222-40	Notification of Employee Rights under the National Labor Relations Act.	(DEC 2010)
All	FAR 52.222-50	Combating Trafficking in Persons.	(NOV 2021)
Services, construction, >\$3,500.00, in US (NC)	FAR 52.222-54	Employment Eligibility Verification.	(JAN 2025)
All	FAR 52.223-3	Hazardous Material Identification and Material Safety Data.	(FEB 2021)
All subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause	FAR 52.223-7	Notice of Radioactive Materials.	(JAN 1997)

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All	FAR 52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.	(MAY 2024)
All	FAR 52.225-8	Duty-Free Entry	(OCT 2010)
All	FAR 52.225-13	Restrictions on Certain Foreign Purchases.	(FEB 2021)
SAT	FAR 52.227-1	Authorization and Consent.	(JUN 2020)
SAT	FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement.	(JUN 2020)
Amount of royalties reported during negotiation of the subcontract exceeds \$250.	FAR 52.227-9	Refund of Royalties.	(APR 1984)
All subcontracts that cover or are likely to cover classified subject matter.	FAR 52.227-10	Filing of Patent Applications-Classified Subject Matter.	(DEC 2007)
All subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.	FAR 52.227-11	Patent Rights-Ownership by the Contractor.	(MAY 2014)
All subcontracts for experimental, developmental, or research work.	FAR 52.227-13	Patent Rights-Ownership by the Government.	(DEC 2007)
The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract.	FAR 52.227-14	Rights in Data-General.	(MAY 2014)
All subcontracts to which the Defense Base Act applies	FAR 52.228-3	Workers' Compensation Insurance (Defense Base Act).	(JUL 2014)
All	FAR 52.228-4	Workers' Compensation and War-Hazard Insurance Overseas.	(APR 1984)
Government Installation	FAR 52.228-5	Insurance-Work on a Government Installation.	(JAN 1997)
All	FAR 52.232-39	Unenforceability of Unauthorized Obligations.	(JUN 2013)
SB	FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors.	(MAR 2023)
All	FAR 52.234-1	Industrial Resources Developed Under Title III Defense Production Act	(SEP 2016)
All	FAR 52.242-15	Stop-Work Order.	(AUG 1989)
All	FAR 52.244-2	Subcontracts (i.e., approved purchasing system).	(JUN 2020)
All	FAR 52.244-5	Competition in Subcontracting.	(AUG 2024)
All	FAR 52.244-6	Subcontracts for Commercial Products and Commercial Services.	(JAN 2025)
All	FAR 52.246-2	Inspection of Supplies-Fixed-Price.	(AUG 1996)



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All	FAR 52.246-26	Reporting Nonconforming Items.	(AUG 2024)
All	FAR 52.247-63	Preference For U.S.-Flag Air Carriers.	(JAN 2025)
SAT	FAR 52.248-1 + Alt I, II & III	Value Engineering.	(JUN 2020)
SAT	DFARS 252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.	(JAN 2023)
All	DFARS 252.203-7002	Requirement to Inform Employees of Whistleblower Rights.	(DEC 2022)
>6M	DFARS 252.203-7004	Display of Hotline Posters.	(JAN 2023)
All	DFARS 252.204-7000	Disclosure of Information.	(OCT 2016)
Federal Controlled Facility	DFARS 252.204-7004	Level I Antiterrorism Awareness Training for Contractors.	(JAN2023)
All	DFARS 252.204-7008	Compliance with Safeguarding Covered Defense Information Controls.	(OCT 2016)
All orders with Operationally critical support involving covered defense information	DFARS 252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting.	(MAY 2024)
All	DFARS 252.204-7018	Prohibition On the Acquisition of Covered Defense Telecommunications Equipment Or Services.	(JAN 2023)
All except COTS	DFARS 252.204-7020	NIST SP 800-171 DOD Assessment Requirements.	(NOV 2023)
>150k	DFARS 252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Gov't of a Terrorist Country.	(MAY 2019)
if item is uniquely identifiable	DFARS 252.211-7003	Item Unique Identification and Valuation.	(JAN 2023)
SB	DFARS 252.219-7003	Small Business Subcontracting Plan (DOD Contracts)-Basic.	(DEC 2019)
>1M	DFARS 252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements.	(JAN 2023)
Any contract that could require, may require or permit access to DoD installation	DFARS 252.223-7006	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.	(SEP 2014)
AA&E	DFARS 252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, And Explosives.	(NOV 2023)
Items in US munitions list/ 600 series commerce control list	DFARS 252.225-7007	Prohibition on Acquisition of United states Munitions List Items from Communist Chinese Military companies.	(DEC 2018)
All	DFARS 252.225-7012	Preference For Certain Domestic Commodities.	(APR 2022)
All	DFARS 252.225-7013	Duty-Free Entry.	(NOV 2023)
All	DFARS 252.225-7015	Restriction on Acquisition of Hand or Measuring Tools.	(JUN 2005)

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All	DFARS 252.225-7016	Restriction on Acquisition of Ball and Roller Bearings.	(JAN 2023)
All subcontracts for forging items or for other items that contain forging items	DFARS 252.225-7025	Restriction on Acquisition of Forgings.	(DEC 2009)
All	DFARS 252.225-7048	Export-Controlled Items.	(JUN 2013)
All	DFARS 252.225-7056	Prohibition Regarding Business Operation with the Maduro Regime.	(JAN 2023)
>500k	DFARS 252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.	(JAN 2023)
Where technical data to be delivered to Government	DFARS 252.227-7013 + Alt I	Rights in Technical Data-Noncommercial Items.	(JAN 2025)
Applicable where software or software documentation will be delivered to gov (Non-Commercial)	DFARS 252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.	(JAN 2025)
Contains technical data to be delivered to the government (commercial)	DFARS 252.227-7015	Technical Data—Commercial Items.	(JAN 2025)
All	DFARS 252.227-7016	Rights in Bid or Proposal Information.	(JAN 2023)
Applicable where furnishing software to government	DFARS 252.227-7019	Validation of Asserted Restrictions-Computer Software.	(JAN 2025)
All	DFARS 252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.	(JAN 2025)
All	DFARS 252.227-7027	Deferred Ordering of Technical Data or Computer Software.	(APR 1988)
All	DFARS 252.227-7030	Technical Data—Withholding of Payment.	(MAR 2000)
Applicable if there is a requirement for delivery of Technical Data	DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data.	(JAN 2025)
All subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required	DFARS 252.235-7003	Frequency Authorization	(MAR 2014)
All	DFARS 252.244-7000	Subcontracts for Commercial Items.	(NOV 2023)
All	DFARS 252.245-7005	Management and Reporting of Government Property.	(JAN 2024)
!!	DFARS 252.246-7003	Notification of Potential Safety Issues.	(JAN 2023)



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All	DFARS 252.247-7023	Transportation of Supplies by Sea -- Basic.	(OCT 2024)
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### FAR 52.215-11 (OCT/2021)

#### PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA--MODIFICATIONS (DEVIATION 2022-00001)

- (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$2 million on the date of execution of the modification, except that this clause does not apply to any modification if an exception under Federal Acquisition Regulation (FAR) 15.403-1(b) applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because--
- (1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
  - (2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractors Certificate of Current Cost or Pricing Data; or
  - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
- (1) The actual subcontract price; or
  - (2) The actual cost to the Contractor, if there was no subcontract awarded, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.
- (d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.
  - (ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
  - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
  - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

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(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractors knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the as of date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the as of date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the as of date specified on its Certificate of Current Cost or Pricing Data.

(e) 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 Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor 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

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

### **FAR 52.215-12 (OCT/2021)**

#### **SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (DEVIATION 2022-O0001)**

(a) Before awarding any subcontract expected to exceed \$2 million, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$2 million, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with Federal Acquisition Regulation (FAR) 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractors estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies. If the \$2 million threshold for submission of certified cost or pricing data is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that, when entered into, exceeds \$2 million, the Contractor shall insert either--

## **ADDITIONAL STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS**

- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or
- (2) The substance of the clause at 52.215-13, Subcontractor Certified Cost or Pricing Data Modifications (DEVIATION 2022-O0001).

(End of clause)

### **FAR 52.215-13 (OCT/2021)**

#### **SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS (DEVIATION 2022-O0001)**

- (a) The requirements of paragraphs (b) and (c) of this clause shall--
  - (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$2 million on the date of execution of the modification; and
  - (2) Be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed \$2 million, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$2 million, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with Federal Acquisition Regulation (FAR) 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractors estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies. If the \$2 million threshold for submission of certified cost or pricing data is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.
- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$2 million on the date of agreement on price or the date of award, whichever is later.

(End of clause)