
Section I Contract Clauses

I.1 [FAR 52.252-2 Clauses Incorporated by Reference \(Feb 1998\)](#)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the CO will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far/>.

I.2 Clauses Incorporated by Reference

Clause Number	FAR Text Reference	Title
52.202-1	2.201	Definitions (Jul 2004)
52.203-3	3.202	Gratuities (Apr 1984)
52.203-5	3.404	Covenant Against Contingent Fees (Apr 1984)
52.203-6	3.503-2	Restrictions On Subcontractor Sales To the Government (Jul 1995)
52.203-7	3.502-3	Anti-Kickback Procedures (Jul 1995)
52.203-8	3.104-9(a)	Cancellation, Rescission, And Recovery Of Funds For Illegal Or Improper Activity (Jan 1997)
52.203-10	3.104-9(b)	Price Or Fee Adjustment For Illegal Or Improper Activity (Jan 1997)
52.203-12	3.808	Limitation On Payments To Influence Certain Federal Transactions (Sep 2003)
52.204-4	4.303	Printed Or Copied Double-Sided On Recycled Paper (Aug 2000)
52.204-7	4.1104	Central Contractor Registration (Oct 2003)
52.209-6	9.409(b)	Protecting The Government's Interest When Subcontracting With Contractors Debarred, Suspended, Or Proposed For Debarment (Jan 2005)
52.211-5	11.304	Material Requirements (Aug 2000)
52.215-2	15.209(b)	Audit And Records—Negotiation (Jun 1999)
52.215-8	15.209(h)	Order Of Precedence—Uniform Contract Format (Oct 1997)

Clause Number	FAR Text Reference	Title
52.215-10	15.408(b)	Price Reduction For Defective Cost Or Pricing Data (Oct 1997)
52.215-12	15.408(d)	Subcontractor Cost Or Pricing Data (Oct 1997)
52.215-14	15.408(f)(1)	Integrity Of Unit Prices (Oct 1997)
52.215-15	15.408(g)	Pension Adjustments And Asset Reversions (Oct 2004)
52.215-17	15.408(i)	Waiver Of Facilities Capital Cost Of Money (Oct 1997) (TBD At Contract Award)
52.215-18	15.408(j)	Reversion Or Adjustment Of Plans For Postretirement Benefits (PRB) Other Than Pensions (Jul 2005)
52.215-21	15.408(m)	Requirements For Cost Or Pricing Data Or Information Other Than Cost Or Pricing Data - Modifications (Oct 1997)
52.216-7	16.307(a)	Allowable Cost And Payment (Dec 2002)
52.216-8	16.307(b)	Fixed Fee (Mar 1997)
52.216-26	16.603-4(c)	Payments Of Allowable Costs Before Definitization (Dec 2002)
52.219-3	19.1308(a)	Notice Of Total Hubzone Set-Aside (Jan 1999)
52.219-4	19.1308(b)	Notice Of Price Evaluation Preference For Hubzone Small Business Concerns (Jul 2005)
52.219-7	19.508(d)	Notice Of Partial Small Business Set-Aside (Jun 2003)
52.219-8	19.708(a)	Utilization Of Small Business Concerns (May 2004)
52.219-9	19.708(b)	Small Business Subcontracting Plan (Jan 2002) And Alternate II (Jul 2005)

Clause Number	FAR Text Reference	Title
52.219-14	19.508(e) or 19.811-3(e)	Limitations On Subcontracting (Dec 1996) (Applies to set-asides only including 8(a), Hubzone, Service Disabled Veteran-Owned, and Small Business Set-Asides or in full and open competition to Small Disadvantaged Businesses (SBDs) or Hubzone Small Businesses submitting proposals as prime contractors and not waiving the price evaluation adjustment (SDBS) or the price evaluation preference (Hubzone))
52.219-16	19.708(b)(2)	Liquidated Damages—Subcontracting Plan (Jan 1999)
52.219-27	19.1407	Notice Of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (Applies only to Service Disabled Veteran-Owned Set-Aside only)
52.222-3	22.202	Convict Labor (Jun 2003)
52.222-4	22.305	Contract Work Hours And Safety Standards Act—Overtime Compensation (Jul 2005)
52.222-21	22.810(a)(1)	Prohibition Of Segregated Facilities (Feb 1999)
52.222-26	22.810(e)	Equal Opportunity (Apr 2002)
52.222-35	22.1310(a)(1)	Equal Opportunity For Special Disabled Veterans, Veterans Of The Vietnam Era, and Other Eligible Veterans (Dec 2001)
52.222-36	22.1408(a)	Affirmative Action For Workers With Disabilities (Jun 1998)
52.222-37	22.1310(b)	Employment Reports On Special Disabled Veterans, Veterans Of The Vietnam Era, And Other Eligible Veterans (Dec 2001)
52.222-48	22.1006(e)(1)	Exemption From Application Of Service Contract Act Provisions For Contracts For Maintenance, Calibration, And/Or Repair Of Certain Information Technology, Scientific And Medical And/Or Office And Business Equipment – Contractor Certification (Aug 1996)
52.223-5	23.1005	Pollution Prevention And Right-To-Know Information (Aug 2003)

Clause Number	FAR Text Reference	Title
52.223-6	23.505	Drug-Free Workplace (May 2001)
52.223-10	23.705	Waste Reduction Programs (Aug 2000)
52.223-14	23.906(b)	Toxic Chemical Release Reporting (Aug 2003)
52.224-1	24.104	Privacy Act Notification (Apr 1984)
52.224-2	24.104	Privacy Act (Apr 1984)
52.225-1	25.1101(a)(1)	Buy American Act – Supplies (Jun 2003)
52.225-8	25.1101(e)	Duty-Free Entry (Feb 2000)
52.225-13	25.1103(a)	Restrictions On Certain Foreign Purchases (March 2005)
52.227-1	27.201-2(a)	Authorization And Consent (Jul 1995)
52.227-2	27.202-2	Notice And Assistance Regarding Patent And Copyright Infringement (Aug 1996)
52.227-3	27.203-1(b) 27.203-2(a) 27.203-4(a)(2)	Patent Indemnity (Apr 1984)
52.227-14	27.409(a)(b)(c)(d)&(f)	Rights In Data—General (Jun 1987) Alternates I, II, III And V
52.227-16	27.409(h)	Additional Data Requirements (Jun 1987)
52.227-17	27.409(i)	Rights In Data – Special Works (Jun 1987)
52.227-19	27.409(k)	Commercial Computer Software – Restricted Rights (Jun 1987)
52.227-23	27.409(s)	Rights To Proposal Data (Technical) (Jun 1987)
52.228-5	28.310	Insurance – Work On A Government Installation (Jan 1997)
52.228-7	28.311-1	Insurance – Liability To Third Persons (Mar 1996)
52.229-3	29.401-3	Federal, State And Local Taxes (Apr 2003)
52.230-2	30.201-4(a)	Cost Accounting Standards (Apr 1998)
52.230-6	30.201-4(d)(1)	Administration Of Cost Accounting Standards (Apr 2005)
52.232-1	32.111(a)(1)	Payments (Apr 1984)
52.232-7	32.111(a)(7)	Payments Under Time-And-Materials And Labor Hour Contracts (Aug 2005)

Clause Number	FAR Text Reference	Title
52.232-8	32.111(b)(1)	Discounts For Prompt Payment (Feb 2002)
52.232-9	32.111(b)(2)	Limitation On Withholding Of Payments (Apr 1984)
52.232-11	32.111(c)(2)	Extras (Apr 1984)
52.232-16	32.502-4(a) 32.502-4(b)	Progress Payments (Apr 2003) And (Alternate I) (Mar 2000)
52.232-17	32.617(a)&(b)	Interest (Jun 1996)
52.232-18	32.705-1(a)	Availability Of Funds (Apr 1984)
52.232-19	32.705-1(b)	Availability Of Funds For The Next Fiscal Year (Apr 1984)
52.232-20	32.705-2(a)	Limitation Of Cost (Apr 1984)
52.232-23	32.806(a)(1)	Assignment Of Claims (Jan 1986)
52.232-25	32.908(c)	Prompt Payment (Oct 2003) And Alternate I (Feb 2002)
52.232-33	32.1110(a)(1)	Payment By Electronic Funds Transfer – Central Contractor Registration (Oct 2003)
52.232-37	32.1110(e)	Multiple Payment Arrangements (May 1999)
52.233-1	33.215	Disputes (Jul 2002) And Alternate 1 (Dec 1991)
52.233-3	33.106(b)	Protest After Award (Aug 1996) Alternate I (Jun 1985)
52.237-2	37.110(b)	Protection Of Government Buildings, Equipment, And Vegetation (Apr 1984)
52.237-3	37.110(c)	Continuity Of Services (Jan 1991)
52.239-1	39.107	Privacy Or Security Safeguards (Aug 1996)
52.242-1	42.802	Notice Of Intent To Disallow Costs (Apr 1984)
52.242-3	42.709-6	Penalties For Unallowable Costs (May 2001)
52.242-13	42.903	Bankruptcy (Jul 1995)
52.243-1	43.205(a)(1)	Changes—Fixed-Price (Aug 1987) And Alternate II (Apr 1984)
52.243-2	43.205(b)(1)	Changes—Cost-Reimbursement (Aug 1987) Alternate II (Apr 1984)

Clause Number	FAR Text Reference	Title
52.243-3	43.205(c)	Changes—Time-And-Materials Or Labor Hours (Sep 2000)
52.244-2	44.204(a)(1)	Subcontracts (Aug 1998) And Alternate II And (2)(II) (Mar 2005)
52.244-5	44.204(c)	Competition In Subcontracting (Dec 1996)
52.244-6	44.403	Subcontracts For Commercial Items (Dec 2004)
52.245-1	45.106(a)	Property Records (Apr 1984)
52.245-2	45.106(b)(1) 45.106(b)(2)	Government Property (Fixed-Price Contracts) (May 2004) And Alternate I (Apr 1984)
52.245-5	45.106(f)(1)	Government Property (Cost-Reimbursement, Time-And-Material, Or Labor-Hour Contracts) (May 2004)
52.245-19	45.308-2	Government Property Furnished “As Is” (Apr 1984)
52.246-20	46.710(d)	Warranty Of Services (May 2001)
52.246-23	46.805	Limitation Of Liability (Feb 1997)
52.246-25	46.805	Limitation Of Liability—Services (Feb 1997)
52.247-17	47.207-6(a)(2)	Charges (Apr 1984)
52.248-1	48.201	Value Engineering (Feb 2000)
52.249-1	49.502(a)(1)	Termination For Convenience Of The Government (Fixed-Price)(Short Form) (Apr 1984)
52.249-2	49.502(b)(1)(i)	Termination For Convenience Of The Government (Fixed Price) (May 2004)
52.249-4	49.502(c)	Termination For Convenience Of The Government (Services) (Short Form) (Apr 1984)
52.249-6	49.503(a)(1)	Termination (Cost-Reimbursement) (May 2004) And Alternate IV (Sept 1996)
52.249-8	49.504(a)(1)	Default (Fixed-Price Supply And Service) (Apr 1984)
52.249-14	49.505(d)	Excusable Delays (Apr 1984)
52.251-1	51.107	Government Supply Sources (Apr 1984)
52.253-1	53.111	Computer Generated Forms (Jan 1991)

I.3.1 52.209-1 Qualification Requirements (Feb 1995)

- a) *Definition.* “Qualification requirement,” as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.
- b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Contractors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.
- c) If an contractor, manufacturer, source, product, or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Contractor’s Name _____
Manufacturer’s Name _____
Source’s Name _____
Item Name _____
Service Identification _____
Test Number _____(to the extent known)

- d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the CO discovers that an applicable qualification requirement was not in fact met at the time of award, the CO may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government’s best interests.

- e) If an contractor, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products, qualified manufacturers, or qualified bidders list, the contractor must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an contractor to submit evidence of qualification.
- f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

I.3.2 52.215-19 Notification of Ownership Changes (Oct 1997)

- a) The contractor shall make the following notifications in writing:
 - 1) When the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
 - 2) The contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur because of a change in ownership.
- b) The contractor shall-
 - 1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - 2) Provide the ACO or designated representative ready access to the records upon request;
 - 3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the contractor's ownership changes; and
 - 4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each contractor ownership change.
- c) The contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of [FAR 15.408\(k\)](#).

I.3.3 52.216-18 Ordering (Oct 1995)

- a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from date of award through last day of contract period of performance.
- b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

I.3.4 52.216-19 Order Limitations (Oct 1995)

- a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$2,500, the Government is not obligated to purchase, nor is the contractor obligated to furnish, those supplies or services under the contract.
- b) Maximum order. The contractor is not obligated to honor-
 - 1) Any order for a single item in excess of the estimated value of the contract;
 - 2) Any order for a combination of items in excess of the estimated value of the contract or
 - 3) A series of orders from the same ordering office within 2 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.
- c) If this is a requirements contract (i.e., includes the requirements clause at [FAR subsection 52.216-21](#)), the Government is not required to order a part of any one requirement from the contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.
- d) Notwithstanding paragraphs (b) and (c) of this section, the contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within three days after issuance, with written notice stating the contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

I.3.5 52.216-22 Indefinite Quantity (Oct 1995)

- a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the “maximum.” The Government shall order at least the quantity of supplies or services designated in the Schedule as the “minimum.
- c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order. The contract shall govern the contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the contractor shall not be required to make any deliveries under this contract after one year from the end date of the contract’s effective period.

I.3.6 52.216-23 Execution and Commencement of Work (Apr 1984)

The contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the CO not later than **TBD (insert date)**. Upon acceptance by both parties, the contractor shall proceed with performance of the work, including purchase of necessary materials.

I.3.7 52.216-24 Limitation of Government Liability (Apr 1984)

- a) In performing this contract, the contractor is not authorized to make expenditures or incur obligations exceeding **TBD** dollars.

- b) The maximum amount for which the Government shall be liable if this contract is terminated is **TBD** dollars.

I.3.8 52.216-25 Contract Definitization (Oct 1997)

- a) A **TBD** [*insert specific type of contract*] definitive contract is contemplated. The contractor agrees to begin promptly negotiating with the CO terms of a definitive contract that will include (1) all clauses required by the FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The contractor agrees to submit a **TBD** [*insert specific type of proposal; e.g., fixed-price or cost-and-fee*] proposal and cost or pricing data supporting its proposal.
- b) The schedule for definitizing this contract is [*insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data*]: **TBD**
- c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the CO, the CO may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with [Subpart 15.4](#) and [Part 31](#) of the FAR, subject to contractor appeal as provided in the Disputes clause. In any event, the contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.
 - 1) After the CO's determination of price or fee, the contract shall be governed by-
 - (i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the CO under this paragraph (c);
 - (ii) All clauses required by law as of the date of the CO's determination; and
 - (iii) Any other clauses, terms, and conditions mutually agreed upon.
 - 2) To the extent consistent with paragraph (c) (1) of this, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

Alternate I (Apr 1984)

In letter contracts awarded based on price competition, add the following paragraph (d) to the basic clause:

- d) The definitive contract resulting from this letter contract will include a negotiated [TBD - insert “price ceiling” or “firm, fixed price”] in no event to exceed [TBD - insert the proposed price upon which the award was based].

I.3.9 52.217-8 Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The CO may exercise the option by written notice to the contractor within 60 days before the contract expires.

I.3.10 52.217-9 Option to Extend the Term of the Contract (Mar 2000)

- a) The Government may extend the term of this contract by written notice to the contractor within 30 days, provided that the Government gives the contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five years.

I.3.11 52.219-18 Notification Of Competition Limited To Eligible 8(A) Concerns (Jun 2003) - Alternate III (Deviation) (May 1998)

- a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer-

- 1) The contractor is in conformance with the 8(a) support limitation set forth in its approved business plan; and
 - 2) The contractor is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.
- b) By submission of its offer, the contractor represents that it meets all of the criteria set forth in paragraph (a) of this clause.
- c) Any award resulting from this solicitation will be made to the SBA, which will subcontract performance to the successful 8(a) contractor selected through the evaluation criteria set forth in this solicitation.
- d) 1) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.
- 2) The [TBD - insert name of SBA's contractor] will notify the IRS CO in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

Alternate III (Deviation):

Substitute the following for the paragraph (c) in 52.219-18:

- (c) Any award resulting from this solicitation will be made directly by the CO to the successful 8(a) contractor selected through the evaluation criteria set forth in this solicitation.

I.3.12 52.222-2 Payment for Overtime Premiums (Jul 1990)

- a) The use of overtime is authorized under this contract if the overtime premium does not exceed *zero or the overtime premium is paid for work-
- 1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - 2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation,

- 3) maintenance, standby plant protection, operation of utilities, or accounting;
- 3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
- 4) That will result in lower overall costs to the Government.
- b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall-
 - 1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the CO to evaluate the necessity for the overtime;
 - 2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
 - 3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
 - 4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

* Insert either “zero” or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

I.3.13 52.232-32 Performance-Based Payments (Feb 2002)

- a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract’s description of the basis for payment.
- b) Contractor request for performance-based payment. The contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the CO. Unless otherwise authorized by the CO, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The contractor’s request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.
- c) Approval and payment of requests.

- 1) The contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The CO shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The CO may, at any time, require the contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.
 - 2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30th day after receipt of the request for performance-based payment. However, the designated payment office is not required to provide payment if the CO requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the contractor certification. The payment period will not begin until the CO approves the request.
 - 3) The approval by the CO of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the contractor from performance of obligations under this contract.
- d) Liquidation of performance-based payments.
- 1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either pre-designated liquidation amounts or a liquidation percentage.
 - 2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the contractor shall repay to the Government the excess. Unless otherwise determined by the CO, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.
- e) Reduction or suspension of performance-based payments. The CO may reduce or suspend performance-based payments, liquidate performance-

based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

- 1) The contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).
 - 2) Performance of this contract is endangered by the contractor's-
 - i) Failure to make progress; or
 - ii) Unsatisfactory financial condition.
 - 3) The contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.
- f) Title.
- 1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.
 - 2) "Property," as used in this clause, includes all of the following described items acquired or produced by the contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:
 - i) Parts, materials, inventories, and work in process;
 - ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;
 - iii) Nondurable (i.e., non-capital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (f)(2)(ii) of this clause; and
 - iv) Drawings and technical data, to the extent the contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.
 - 3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination or special tooling clauses) shall determine the handling and disposition of the property.
 - 4) The contractor may sell any scrap resulting from production under this contract, without requesting the CO's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the CO.
 - 5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the contractor

- must obtain the CO's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.
- 6) When the contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the contractor for all property (or the proceeds thereof) not-
 - i) Delivered to, and accepted by, the Government under this contract; or
 - ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.
 - 7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.
 - g) Risk of loss. Before delivery to and acceptance by the Government, the contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.
 - h) Records and controls. The contractor shall maintain records and controls adequate for administration of this clause. The contractor shall have no entitlement to performance-based payments during any time the contractor's records or controls are determined by the CO to be inadequate for administration of this clause.
 - i) Reports and Government access. The contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the CO for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The contractor shall give the Government reasonable opportunity to examine and verify the contractor's records and to examine and verify the contractor's performance of this contract for administration of this clause.
 - j) Special terms regarding default. If this contract is terminated under the Default clause, (1) the contractor shall, on demand, repay to the

- Government the amount of unliquidated performance-based payments, and (2) title shall vest in the contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.
- k) Reservation of rights.
- 1) No payment or vesting of title under this clause shall-
 - i) Excuse the contractor from performance of obligations under this contract; or
 - ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.
 - 2) The Government's rights and remedies under this clause-
 - i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and
 - ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.
- l) Content of contractor's request for performance-based payment. The contractor's request for performance-based payment shall contain the following:
- 1) The name and address of the contractor;
 - 2) The date of the request for performance-based payment;
 - 3) The contract number and/or other identifier of the contract or order under which the request is made;
 - 4) Such information and documentation as is required by the contract's description of the basis for payment; and
 - 5) A certification by a contractor official authorized to bind the contractor, as specified in paragraph (m) of this clause.
- m) Content of contractor's certification. As required in paragraph (l)(5) of this clause, the contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that-

- 1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the contractor, in accordance with the contract and the instructions of the CO;

- 2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;
- 3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;
- 4) There has been no materially adverse change in the financial condition of the contractor since the submission by the contractor to the Government of the most recent written information dated _____; and
- 5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

I.3.14 FAR 52.252-6 Authorized Deviations in Clauses (Apr 1984)

- a) The use in this solicitation or contract of any FAR ([48 CFR Chapter 1](#)) clause with an authorized deviation is indicated by the addition of "(Deviation)" after the date of the clause.
- b) The use in this solicitation or contract of Limitation on Payments to Influence Certain Federal Transactions, Department of the Treasury Acquisition Regulation ([DTAR 1052.203-12](#)) clause with an authorized deviation is indicated by the addition of "(Deviation)" after the name of the regulation.

I.4. Department of the Treasury Acquisition Regulations (DTAR) Clauses Incorporated in Full Text

I.4.1 DTAR 1052.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jan 1990) (Deviation)

- a) Definitions.
"Agency," as used in this clause, means executive agency as defined in 2.101.
"Covered Federal action", as used in this clause, means any of the following Federal actions:
 - (a) The awarding of any Federal contract
 - (b) The making of any Federal grant

- (c) The making of any Federal loan
- (d) The entering into of any cooperative agreement
- (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

“Indian tribe” and “tribal organization,” as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act ([25 USC 450B](#)) and include Alaskan natives.

“Influencing or attempting to influence,” as used in this clause, means making, with the intent to influence, any communication to or an appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local Government,” as used in this clause, means a unit of Government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a Governmental duty, including a local public authority, a special district, an intrastate district, a council of Governments, a sponsor group representative organization, and any other instrumentality of a local Government.

“Officer or employee of an agency,” as used in this clause, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, USC, including a position under a temporary appointment.
- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, USC.
- (c) A special Government employee, as defined in section 202, title 18, USC.
- (e) An individual who is a member of a Federal Advisory Committee Act, title 5, USC, appendix 2.

“Person,” as used in this clause, means an individual, corporation, company association, authority, firm, partnership, society, State, and local Government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or an other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Reasonable compensation,” as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for such work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment,” as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private

sector.

“Recipient,” as used in this clause, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed,” as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, a multi-State, regional, or interstate entity having Governmental duties and powers.

b) Prohibitions.

- 1) Section 1352 of title 31, USC, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal action: The awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) The Act also requires contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan or cooperative agreement.
- 3) The prohibitions of the Act do not apply under the following condition:
 - i) Agency and legislative liaison by own employees.
 - (A) The prohibition on the use of appropriated funds, in

- subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
- (B) For purposes of subdivision (b)(3)(I)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted a any time.
 - (C) The following agency and legislative liaison activities are permitted any time where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action-
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of any unsolicited proposal prior to its official submission; and,
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provision of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
 - (E) Only those services expressly authorized by subdivision (b)(3)(I)(A) of this clause are permitted under this clause.
 - ii) Professional and technical services.
 - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of-
 - (1) A payment of reasonable compensation made to an officer of employee of a person requesting or receiving a covered Federal action or any extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in

- the preparation, submission, or negotiation of any bid, proposal or application for that Federal action or for meeting requirements imposed or pursuant to law as a condition for receiving that Federal action.
- (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or any extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal or application for that Federal action or for meeting requirements imposed or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, “professional” and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. The following examples are not intended to be all-inclusive, to limit the application of the professional or technical exemption provided in the law, or to limit the exemption to licensed professionals. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communication with a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communication with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client’s proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly communications with the intent to influence made by an engineer providing engineering analysis prior to the preparation or submission of an bid or proposal are not

- allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
 - (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
 - (E) The reporting requirements of [FAR 3.803\(a\)](#) shall not apply with respect to payments of reasonable compensation made to regularly employed officer or employees of a person.
- iii) Selling activities by independent sales representatives. The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
- (A) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
 - (B) Technical discussions and other activities regarding the application or adaptation of the person's products services for an agency's use.
- c) Disclosure.
- 1) The contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, [OMB standard form LLL](#), Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
 - 2) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes-
 - i) A cumulative increase of \$25,000 or more in the amount paid or expect to be paid for influencing or attempting to influence a covered Federal action; or

- ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - iii) A change in the officer(s), employee(s), or Member(s) contacted influence or attempt to influence a covered Federal action.
- 3) The contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- 4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosures to the CO at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- d) Agreement. The contractor agrees not to make any payment prohibited by this clause.
- e) Penalties.
 - 1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided by [31 USC 1352](#). An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
 - 2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- f) Cost allowability. Nothing in this clause makes allowable or reasonable any cost that would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

I.4.2 DTAR 1052.219-72 Section (8a) Direct Awards (May 1998)
(Applies to 8(A) Competitive Set-Aside Only)

- a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of the Treasury.

SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

Washington Metropolitan Area District Office
WDO Requirement No. 7700-05-405932

- b) The CO is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the CO shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The CO shall also coordinate with SBA prior to processing any novation agreement. The CO may assign contract administration functions to a contract administration office.
- c) The contractor agrees:
 - 1) to notify the CO, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 USC 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and,
 - 2) to adhere to the requirements of [FAR 52.219-14](#), Limitations on Subcontracting.

I.4.3 DTAR 1052.219-75 Mentor Requirements and Evaluation
(Jan 2000)

- a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's OSBD at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the program, whichever occurs first. At the conclusion of each year in the mentor protégé program, the prime contractor and protégé will formally brief the Department of the Treasury Mentor -Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.
- b) A mentor or protégé shall notify the OSBD and the CO, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the program. A mentor firm shall notify the OSBD and the CO upon receipt of a protégé's notice of withdrawal from the program.

I.4.4 DTAR 1052.228-70 Insurance (Mar 2002)

In accordance with the clause entitled “Insurance—Work on a Government Installation” [or “Insurance—Liability to Third Persons”] in section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the entire period of performance of this contract:

- a) Worker’s compensation and employer’s liability. The contractor shall, as a minimum, meet the requirements specified at [FAR 28.307-2\(a\)](#).
- b) General liability. The contractor shall, as a minimum, meet the requirements specified at [FAR 28.307-2\(b\)](#).
- c) Automobile liability. The contractor shall, as a minimum, meet the requirements specified at [FAR 28.307-2\(c\)](#).

(End of section)