DEPARTMENT OF DEFENSE

The following Special Conditions include Federal Acquisition Regulation (FAR) Provisions that are required to be flowed down into this subcontract. Special Conditions which are not preceded with a [ ] are included in all Subcontracts. Clauses preceded with a [ ] are included only if marked with an "x". The text of these clauses has been modified to reflect the appropriate relationship of the Government, Purchaser and Subcontractor. Unless the clause is designated as "modified", no substantive changes were made in the text of the clause. There are clauses where the Purchaser Subcontract Manager does not have authority to perform as the Government Contracting Officer. In such cases the text is modified to reflect that the Purchaser will process the request or documentation through the Government Contracting Officer. This is not considered a substantive change in the clause text. In the event of a conflict, the clauses included in this Additional Subcontract Special Conditions Set shall take precedence over the FAR Special Conditions Set.

1.	FAR SUPP 252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (12/08)
2.	FAR SUPP 252.203-7002	Requirement to Inform Employees of Whistleblower Rights (9/13)
3.	FAR SUPP 252.204-7000	Disclosure of Information (8/13)
[ ] 4.	FAR SUPP 252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material (12/91)
[ ] 5.	FAR SUPP 252.215-7000	Pricing Adjustments (12/12
[ ] 6.	FAR SUPP 252.215-7002	Cost Estimating System Requirements (12/12)
[ ] 7	FAR SUPP 252.216-7000	Economic Price Adjustment -- Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (3/12)
[ ] 8.	FAR SUPP 252.216-7001	Economic Price Adjustment -- Nonstandard Steel Items (7/97)
[ ] 9.	FAR SUPP 252.217-7008	Bonds (12/91)
[ ]10.	FAR SUPP 252.219-7003	Small Business Subcontracting Plan (DoD Contracts) (10/14)
11	FAR SUPP 252.223-7001	Hazard Warning Labels (12/91)
[ ]12.	FAR SUPP 252.223-7002	Safety Precautions for Ammunition and Explosives (5/94)
13.	FAR SUPP 252.223-7004	Drug-Free Work Force (9/88)
[ ]14.	FAR SUPP 252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (9/14)
[ ]15.	FAR SUPP 252.225-7001	Buy American and Balance of Payments Program (11/14)
[ ]16.	FAR SUPP 252.225-7002	Qualifying Country Sources as Subcontractors (12/12)
[ ]17.	FAR SUPP 252.225-7004	Report of Intended Performance Outside the United States and Canada – Submission After Award (10/10)
[ ]18.	FAR SUPP 252.225-7012	Preference for Certain Domestic Commodities (2/13)
[ ]19.	FAR SUPP 252.225-7013	Duty-Free Entry (11/14)
[ ]20	FAR SUPP 252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (6/05)
[ ]21.	FAR SUPP 252.225-7016	Restriction on Acquisition of Ball and Roller Bearings (6/11)
[ ]22.	FAR SUPP 252.225-7021	Trade Agreements (11/14)
[ ]23.	FAR SUPP 252.225-7036	Buy American -- Free Trade Agreements -- Balance of Payments Program (11/14)
[ ]24.	FAR SUPP 252.225-7044	Balance of Payments Program -- Construction Material (11/14)
[ ]25.	FAR SUPP 252.225-7045	Balance of Payments Program -- Construction Material under Trade Agreements (11/14)
26.	FAR SUPP 252.225-7050	Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism (12/14).
[ ]27.	FAR SUPP 252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small-Business Concerns (9/04)
[ ]28.	FAR SUPP 252.227-7013	Rights in Technical Data - Noncommercial Items (2/14)
[ ]29.	FAR SUPP 252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (2/14)
[ ]30.	FAR SUPP 252.227-7015	Technical Data – Commercial Items (12/14)
[ ]31.	FAR SUPP 252.227-7016	Rights in Bid or Proposal Information (1/11)
[ ]32.	FAR SUPP 252.227-7017	Identification and Assertion of Use, Release or Disclosure Restrictions (1/11)
[ ]33.	FAR SUPP 252.227-7019	Validation of Asserted Restrictions -- Computer Software (9/11)
[ ]34.	FAR SUPP 252.227-7020	Rights in Special Works (6/95)
[ ]35.	FAR SUPP 252.227-7021	Rights in Data -- Existing Works (3/79)
[ ]36.	FAR SUPP 252.227-7022	Government Rights (Unlimited) (3/79)
[ ]37.	FAR SUPP 252.227-7023	Drawings and Other Data to Become Property of Government (3/79)
[ ]38.	FAR SUPP 252.227-7024	Notice and Approval of Restricted Designs (4/84)
[ ]39.	FAR SUPP 252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (3/13)
[ ]40.	FAR SUPP 252.227-7030	Technical Data -- Withholding of Payment (3/00)
[ ]41.	FAR SUPP 252.227-7033	Rights in Shop Drawings (4/66)
[ ]42.	FAR SUPP 252.227-7037	Validation of Restrictive Markings on Technical Data (6/13)
[ ]43.	FAR SUPP 252.227-7039	Patents -- Reporting of Subject Inventions (4/90)
44.	FAR SUPP 252.231-7000	Supplemental Cost Principles (4/12)
45.	FAR SUPP 252.236-7000	Modification Proposals - Price Breakdown (12/91)
[ ]46.	FAR SUPP 252.236-7001	Subcontract Drawings, Maps, and Specifications (8/00)

[ ]	47.	FAR SUPP 252.243-7001	Pricing of Subcontract Modifications (12/91)
[ ]	48.	FAR SUPP 252.236-7013	Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (6/13)
	49.	FAR SUPP 252.244-7000	Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (6/13)
[ ]	50.	FAR SUPP 252.247-7016	Subcontractor Liability for Loss or Damage (12/91)
[ ]	51.	FAR SUPP 252.247-7023	Transportation of Supplies by Sea (4/14)
[ ]	52.	FAR SUPP 252.247-7024	Notification of Transportation of Supplies by Sea (3/00)

1. FAR SUPP 252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE – CONTRACT-RELATED FELONIES (DECEMBER 2008)

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

(1) "Arising out of a Contract with the DoD" means any act in connection with (i) Attempting to obtain, (ii) Obtaining, or (iii) Performing a Subcontract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

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

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

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

(1) In a management or supervisory capacity on this subcontract;
(2) On the board of directors of the Subcontractor; or
(3) As a consultant, agent, or representative for the Subcontractor; or
(4) In any other capacity with the authority to influence, advise, or control the decisions of the subcontractor with regard to this subcontract.

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

(d) 10 U.S.C. 2408 provides that a defense Purchaser or first-tier Subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly --

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
(2) Allowing such a person to serve on the board of directors of the Subcontractor or its first-tier subcontractor.

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

(1) Suspension or debarment;
(2) Cancellation of the contract or subcontract at no cost to the Government; or
(3) Termination of the contract or subcontract for default.

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

(1) The person involved;
(2) The nature of the conviction and resultant sentence or punishment imposed;
(3) The reasons for the requested waiver; and,
(4) An explanation of why a waiver is in the interest of national security.

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

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial Federal Benefits Office, U.S. Department of Justice, telephone (301) 809-4904.

2. FAR SUPP 252.203-7002 REQUIREMENT TO INFORMK EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEPTEMBER 2013)

(a) The Subcontractor shall inform its employees in writing, in the predominant native language of the workforce, of Subcontractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.

(b) The Subcontractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

3. FAR SUPP 252.204-7000 DISCLOSURE OF INFORMATION (AUGUST 2013)

(a) The Subcontractor shall not release to anyone outside the Subcontractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Purchaser has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that has been scoped and negotiated by the contracting activity with the Subcontractor and research performer and determined in writing by the contracting officer to be fundamental research in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the USD (AT&L) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008, (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Subcontractor shall submit its request to the Purchaser least 12 business days before the proposed date for release for processing with the Government Contracting Officer.

(c) The Subcontractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer

4. FAR SUPP 252.208-7000 INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC 1991)

(a) The Government intends to furnish precious metals required in the manufacture of items to be delivered under the subcontract if a determination is made that it is in the Government's best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Purchaser Furnished Property clause of the subcontract.

(b) The Subcontractor shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity in whole troy ounces of precious metals required in the performance of this subcontract (including precious metals required for any first article or production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

Precious Metal*	Quantity	Deliverable Item (NSN and Nomenclature)

*If platinum or palladium, specify whether sponge or granules are required.

(c) Subcontractors shall submit two prices for each deliverable item which contains precious metals -- one based on the Government furnishing precious metals, and one based on the Subcontractor furnishing precious metals. Award will be made on the basis which is in the best interest of the Government.

(d) The Subcontractor agrees to insert this clause, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this subcontract, unless the Subcontractor knows that the item being purchased contains no precious metals.

5. FAR SUPP 252.215-7000 PRICING ADJUSTMENTS (DEC 2012)

The term “pricing adjustment,” as used in paragraph (a) of the clauses entitled “Price Reduction for Defective Certified Cost or Pricing Data–Modifications,” “Subcontractor Certified Cost or Pricing Data,” and “Subcontractor Certified Cost or Pricing Data–Modifications,” means the aggregate increases and/or decreases in cost plus applicable profits.

6. FAR SUPP 252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS (DECEMBER 2012)

(a) *Definitions*.

“Acceptable estimating system” means an estimating system that complies with the system criteria in paragraph (d) of this clause, and provides for a system that—

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Subcontractor's related management systems; and

(4) Is subject to applicable financial control systems.

"Estimating system" means the Subcontractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Subcontractor's—

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

"Significant deficiency" means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon data and information produced by the system that is needed for management purposes.

(b) *General*. The Subcontractor shall establish, maintain, and comply with an acceptable estimating system.

(c) *Applicability*. Paragraphs (d) and (e) of this clause apply if the Subcontractor is a large business and either—

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $50 million or more for which certified cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract—

(i) Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which certified cost or pricing data were required; and

(ii) Was notified, in writing, by the Government Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements*.

(1) The Contractor shall disclose its estimating system to the Government Administrative Contracting Officer (ACO), in writing. If the Subcontractor wishes the Government to protect the data and information as privileged or confidential, the Subcontractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is acceptable when the Contractor has provided the ACO with documentation that—

(i) Accurately describes those policies, procedures, and practices that the Subcontractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Subcontractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(4) The Subcontractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:

(i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.

(ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.

(iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Subcontractor's established procedures.

(iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.

(v) Provide for adequate supervision throughout the estimating and budgeting process.

(vi) Provide for consistent application of estimating and budgeting techniques.

(vii) Provide for detection and timely correction of errors.

(viii) Protect against cost duplication and omissions.

(ix) Provide for the use of historical experience, including historical vendor pricing data, where appropriate.

(x) Require use of appropriate analytical methods.

(xi) Integrate data and information available from other management systems.

(xii) Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.

(xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.

(xiv) Provide procedures to update cost estimates and notify the Sovernment Contracting Officer in a timely manner throughout the negotiation process.

(xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.

(xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.

(xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices that comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement.

(e) *Significant deficiencies.*

(1) The Government Contracting Officer will provide an initial determination to the Subcontractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Subcontractor to understand the deficiency.

(2) The Subcontractor shall respond within 30 days to a written initial determination from the Government Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Subcontractor shall state, in writing, its rationale for disagreeing.

(3) The Government Contracting Officer will evaluate the Subcontractor's response and notify the Subcontractor, in writing, of the Government Contracting Officer’s final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(f) If the Subcontractor receives the Government Contracting Officer’s final determination of significant deficiencies, the Subcontractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(g) *Withholding payments.* If the Government Contracting Officer makes a final determination to disapprove the Subcontractor’s estimating system, and the subcontract includes the clause at 252.242-7005, Contractor Business Systems, the Purchaser may withhold payments in accordance with that clause upon direction from the Government Contracting Officer.

7. FAR SUPP 252.216-7000 ECONOMIC PRICE ADJUSTMENT -- BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (MARCH 2012)

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

"Established price" means a price which is an established catalog or market price for a commercial item sold in substantial quantities to the general public.

"Unit price" excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Subcontractor warrants that the unit price stated for (Identify the item) is not in excess of the Subcontractor's established price in effect on the date set for opening of bids (or the Subcontract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Subcontractor from its catalog, list, or schedule price.

(c) The Subcontractor shall promptly notify the Purchaser Subcontract Manager of the amount and effective date of each decrease in any established price.

(1) Each corresponding subcontract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Subcontractor's established price.

(3) This subcontract shall be modified accordingly.

(d) If the Subcontractor's established price is increased after the date set for opening of bids (or the subcontract date if this is a negotiated subcontract), upon the Subcontractor's written request to the Purchaser Subcontract Manager, the corresponding Subcontract unit price shall be increased by the same percentage that the established price is increased, and this subcontract shall be modified accordingly, provided --

(1) The aggregate of the increases in any subcontract unit price under this subcontract shall not exceed 10 percent of the original Subcontract unit price;

(2) The increased subcontract unit price shall be effective on the effective date of the increase in the applicable established price if the Subcontractor's written request is received by the Purchaser Subcontract Manager within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Purchaser Subcontract Manager; and

(3) The increased subcontract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased subcontract unit price unless the Subcontractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Subcontractor, within the meaning of the Default clause of this subcontract.

(4) The Purchaser Subcontract Manager shall not execute a modification incorporating an increase in a subcontract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Subcontractor's written request, the Purchaser Subcontract Manager may cancel, without liability to either party, any portion of the subcontract affected by the requested increase and not delivered at the time of such cancellation, except as follows --

(1) The Subcontractor may after that time deliver any items that were completed or in the process of manufacture at the time of receipt the cancellation notice, provided that the Subcontractor notifies the Purchaser Subcontract Manager within ten days after the Subcontractor receives the cancellation notice

(2) Upon approval from the Government, Purchaser shall pay for those items at the subcontract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this subcontract under paragraph (e) of this clause, or if there is no cancellation, the Subcontractor shall continue deliveries according to the delivery schedule of the Subcontract. The Subcontractor shall be paid for those deliveries at the subcontract unit price increased to the extent provided by paragraph (d) of this clause.

8. FAR SUPP 252.216-7001 ECONOMIC PRICE ADJUSTMENT -- NONSTANDARD STEEL ITEMS (JULY 1997)

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

"Base labor index" means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

"Base steel index" means the Subcontractor's established price (see Note 6) including all applicable extras of $_____ per _____ (see Note 1) for _____ (see Note 2) on the date set for bid opening (or the date of submission of the offer).

"Current labor index" means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

"Current steel index" means the Subcontractor's established price (see Note 6) for that item, including all applicable extras in effect _____ days (see Note 3) prior to the first day of the month in which delivery is required.

"Established price" is --

(1) A price which (i) Is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and (ii) Meets the criteria of FAR 15.804-3; and

(2) The net price after applying any applicable standard trade discounts offered by the Subcontractor from its catalog, list, or schedule price. (But see Note 6.)

"Labor index" means the average straight time hourly earnings of the Subcontractor's employees in the _____ shop of the Subcontractor's _____ plant (see Note 4) for any particular month.

"Month" means calendar month. However, if the Subcontractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of "month."

(b) Each subcontract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the subcontract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the "base steel index" definition in paragraph (a) shall be _____ percent, and the proportion of the Subcontract unit price attributable to the cost of steel shall be _____ percent. (See Note 5.)

(c) (1) Unless otherwise specified in this subcontract, the labor index shall be computed by dividing the total straight time earnings of the Subcontractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a subcontract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index" and the "current labor index."

(d) Any revision in a subcontract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index" and the "current steel index."

(e) (1) Each subcontract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised subcontract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised subcontract unit price shall be computed by adding --

(i) The adjusted cost of labor (obtained by multiplying _____ percent of the subcontract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying _____ percent of the subcontract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to _____ percent of the original subcontract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see Note 5)).

(4) The aggregate of the increases in any subcontract unit price under this subcontract shall not exceed ten percent of the original Subcontract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f) (1) Pending any revisions of the subcontract unit prices, the Subcontractor shall be paid the Subcontract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Purchaser Subcontract Manager), the Subcontractor shall furnish a statement identifying and certifying the correctness of --

(i) The average straight time hourly earnings of the Subcontractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the "base labor index" and the "current labor index;" and

(ii) The Subcontractor's established prices (see Note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the "base steel index" and the "current steel index."

(3) Upon request of the Purchaser Subcontract Manager, the Subcontractor shall make available all records used in the computation of the labor indices.

(4) Upon request of the certified statement, the Purchaser Subcontract Manager will compute the revised Subcontract unit prices and modify the Subcontract accordingly. No modifications to this subcontract will be made pursuant to this clause until the Purchaser Subcontract Manager has verified the revised established price (see Note 6).

(g) (1) In the event any item of this subcontract is subject to a total or partial termination for convenience, the month in which the Subcontractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the Subcontract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this subcontract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Subcontractor and accepted by the Purchaser prior to receipt by the Subcontractor of the notice of termination.

(h) If the Subcontractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Subcontractor, within the meaning of the clause of this subcontract entitled "Default," the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this subcontract shall be amended accordingly.

NOTES:

1 Subcontractor insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the subcontract item.

2 Subcontractor identify the standard steel mill item to be used in the manufacture of the subcontract item.

3 Subcontractor insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the "labor index" definition.

4 Subcontractor identify the shop and plant in which the standard steel mill item identified under the "base steel index" definition will be finally fabricated or processed into the subcontract item.

5 Subcontractor insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

6 In negotiated acquisitions of nonstandard steel items, when there is no "established price" or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

9. FAR SUPP 252.217-7008 BONDS (DEC 1991)

(a) If the solicitation requires a Subcontractor to submit a bid bond, the Subcontractor may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Subcontractor shall not include in the price any contingency to cover the premium of such a bond.

(c) Even if the solicitation does not require bonds, the Purchaser Subcontract Manager may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Purchaser Subcontract Manager. Where performance and payment

bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise becomes unacceptable to the Purchaser, the Purchaser Subcontract Manager may require the subcontractor furnish whatever additional security the Purchaser Subcontract Manager determines necessary to protect the interests of the Government and Purchaser and of persons supplying labor or materials in the performance of the work contemplated under the Subcontract.

10. FAR SUPP 252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DoD CONTRACTS) (OCTOBER 2014)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this Subcontract.

(a) *Definitions.* "Summary Subcontract Report (SSR) Coordinator," as used in this clause, means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Subcontractor's small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protégé Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protégé firms which are qualified organizations employing the severely disabled; and (2) Former protégé firms that meet the criteria in Section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the subcontractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f) (1) For DoD, the Subcontractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor's individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the Government contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) Except as provided in (f)(2)(iii), the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Subcontractor's individual subcontracting plans.

(iii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

11. FAR SUPP 252.223-7001 HAZARD WARNING LABELS (DEC 1991)

(a) "Hazardous material," as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this subcontract.

(b) The Subcontractor shall label the item package (unit container) of any hazardous material to be delivered under this subcontract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labeling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;
(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;
(4) Federal Hazardous Substances Act; or
(5) Federal Alcohol Administration Act.

(c) The Subcontractor shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this subcontract will be labeled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert "None.")	ACT
_____	_____
_____	_____

(d) The apparently successful Subcontractor agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Subcontractor shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this subcontract.

(e) The Subcontractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this subcontract).

12. FAR SUPP 252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994)

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

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries, and smokes in the following forms:

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

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

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

(b) *Safety requirements.*

(1) The Subcontractor shall comply with the requirements of the DoD Contractor's Safety Manual for Ammunition and Explosives, DoD 4145.26-M hereafter referred to as "the manual", in effect on the date of the solicitation for this subcontract. The Subcontractor shall also comply with any other additional requirements included in the schedule of this subcontract.

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

(c) *Noncompliance with the manual.*

(1) If the Purchaser Subcontract Manager notifies the Subcontractor of any noncompliance with the manual or schedule provisions, the Subcontractor shall take immediate steps to correct the noncompliance. The Subcontractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the Subcontract.

(2) The Subcontractor has 30 days from the date of notification by the Purchaser Subcontract Manager to correct the noncompliance and inform the Purchaser Subcontract Manager of the actions taken. The Purchaser Subcontract Manager may direct a different time period for the correction of noncompliances.

(3) If the Subcontractor refuses or fails to correct noncompliances within the time period specified by the Purchaser Subcontract Manager, the Purchaser has the right to direct the subcontractor to cease performance on all or part of this subcontract. The Subcontractor shall not resume performance until the Purchaser Subcontract Manager is satisfied that the corrective action was effective and the Purchaser Subcontract Manager so informs the Subcontractor.

(4) The Purchaser Subcontract Manager or Government may remove Purchaser and/or Government personnel at any time the Subcontractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government and/or Purchaser personnel results in increased costs to the Subcontractor, the Subcontractor shall not be entitled to an adjustment in the Subcontract price or a change in the delivery or performance schedule unless the Purchaser Subcontract Manager later determines that the Subcontractor had in fact complied with the manual or schedule provisions. If the Subcontractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this subcontract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Subcontractor shall --

(1) Notify the Purchaser Subcontract Manager immediately;
(2) Conduct an investigation in accordance with other provisions of this subcontract or as required by the Purchaser Subcontract Manager; and
(3) Submit a written report to the Purchaser Subcontract Manager.

(e) *Subcontractor responsibility for safety.*
(1) Nothing in this clause, nor any Government or Purchaser action or failure to act in surveillance of this subcontract, shall relieve the Subcontractor of its responsibility for the safety of --

(i) The Subcontractor's personnel and property;
(ii) The Government's personnel and property; or
(iii) The general public.

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

(f) *Subcontractor responsibility for Subcontract performance.*

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

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

(g) *2nd tier subcontractors.*

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

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate 2nd tier Subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) **NOTE:** The Purchaser Subcontract Manager or authorized representative shall notify the Subcontractor of all findings concerning 2nd tier Subcontractor safety and compliance with the manual. The Purchaser Subcontract Manager or authorized representative may furnish copies to the 2nd tier Subcontractor. The Subcontractor in turn shall communicate directly with the 2nd tier Subcontractor, substituting its name for references to "the Government" or "Purchaser". The Subcontractor and higher tier 2nd tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or Subcontract performance.

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

(3) The Subcontractor shall ensure that the 2nd tier Subcontractor understands and agrees to the Government's right to access to the 2nd tier subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of 2nd tier Subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Subcontractor shall notify the Purchaser Subcontract Manager or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the

Subcontractor shall request approval for such change in accordance with the clause of this subcontract entitled "Change in Place of Performance - Ammunition and Explosives".

13. FAR SUPP 252.223-7004 DRUG-FREE WORK FORCE (SEPTEMBER 1988)

(a) *Definitions.*

(1) "Employee in a sensitive position" means an employee who has been granted access to classified information; or employees in other positions that the Subcontractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs" as used I this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the U.S.C., the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Subcontractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, subcontractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Subcontractor programs shall include the following, or appropriate alternative:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by subcontractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Subcontractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Subcontractor based on considerations that include the nature of the work being performed under the subcontract, the employee's duties, the efficient use of Subcontractor resources, and the risks to health, safety or national security that could result from the failure of an employee adequately to discharge his or her position;

(ii) In addition the subcontractor may establish a program for employee drug testing (A) when there is a reasonable suspicion that an employee uses illegal d rugs, (B) When an Employee has been involved in an accident or unsafe practice; (C) as part of or as a follow-up to counseling or rehabilitation for illegal drug use; or (D) As part of a voluntary employee drug testing program.

(iii) The Subcontractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purposes of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988.

(d) Subcontractors shall adopt appropriate personnel procedures to deal with employees who are found to be suing drugs illegally. Subcontractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Subcontractor, I accordance with procedures established by the Subcontractor determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with State and local laws , or with an existing collective bargaining agreement; provided that with respect tot he latter, the subcontractor agrees that those issued that are in conflict will be a subject of negotiations at the next collective bargaining session.

14. FAR SUPP 252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (SEPTEMBER 2014)

(a) *Definitions.*

(a) Definitions. As used in this clause—

"Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

"Toxic or hazardous materials" means—

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Subcontractor is prohibited from storing, treating, or disposing of toxic or hazardous materials not owned by DoD on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense. A charge may be assessed for any storage or disposal authorized under any of the exceptions to 10 U.S.C. 2692. If a charge is to be assessed, then such assessment shall be identified elsewhere in the subcontract with payment to the Government on a reimbursable cost basis.

(c) The Subcontractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that require, may require, or permit a subcontractor access to a DoD installation, at any subcontract tier.

15. FAR SUPP 252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (NOVEMBER 2014)

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

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum of agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, and United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if —

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements 41 U.S.C chapter 83, Buy American. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (see section 12.505(a)(1) of the Federal Acquisition Regulation). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Subcontractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American - Balance of Payments Program Certificate provision of the solicitation. If the Subcontractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Subcontractor's option, a domestic end product.

(d) The Subcontract price does not include duty for end products or components for which the Subcontractor will claim duty-free entry.

16. FAR SUPP 252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DECEMBER 2012)

(a) Definition. "Qualifying country," as used in this clause, means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Subcontractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this subcontract.

17. FAR SUPP 252.225-7004 REPORT OF INTNEDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA – SUBMISSION AFTER AWARD (OCTOBER 2010)

(a) *Definition*. "United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Reporting requirement.* The Subcontractor shall submit a report in accordance with this clause, if the Subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds $650,000 in value; and

(2) Could be performed inside the United States or Canada.

(c) *Submission of reports*. The Subcontractor—

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer through the Purchase; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC), Washington, DC 20301-3060.

(d) *Report format*. The Subcontractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.

18. FAR SUPP 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (FEBRUARY 2013)

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

"Component" means any item supplied to the Government as part of an end product or of another component.

"End product" means supplies delivered under a line item of this contract.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum of agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland.

"Structural component of a tent"—

(i) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs);

(ii) Does not include equipment such as heating, cooling, or lighting.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Subcontractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia.

(3)(i) Tents and structural components of tents;

(ii) Tarpaulins; or

(iii) Covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR Part 2;

(3) To waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives;

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

(5) To chemical warfare protective clothing produced in a qualifying country; or

(6) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

19. FAR SUPP 252.225-7013 DUTY-FREE ENTRY (NOVEMBER 2014)

(a) Definitions. As used in this clause—

"Component," means any item supplied to the Government as part of an end product or of another component.

"Customs territory of the United States" means the 50 States, the District of Columbia, and Puerto Rico.

"Eligible product" means—

(i) "Designated country end product," as defined in the Trade Agreements (either basic or alternate) clause of this contract;

(ii) "Free Trade Agreement country end product," other than a "Bahrainian end product," a "Moroccan end product," a Panamanian end product," or a "Peruvian end product," as defined in the Buy American—Free Trade

Agreements—Balance of Payments Program (either basic or alternate II) clause of this contract, basic or its Alternate II;

(iii) "Canadian end product," as defined in the Buy American—Free

Trade Agreements—Balance of Payments Program (either alternate I or alternate III) clause of this Subcontract; or

(iv) "Free Trade Agreement country end product" other than a "Bahrainian end product," "Korean end product," "Moroccan end product," "Panamanian end product," or "Peruvian end product," as defined in of the Buy

American—Free Trade Agreements—Balance of Payments Program (either alternate IV or alternate V) clause of this contract.

"Qualifying country" and "qualifying country end product" have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract, basic or alternate.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the customs territory of the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.- made end products to be delivered under this contract; or

(3) Other supplies for which the Subcontractor estimates that duty will exceed $200 per shipment into the customs territory of the United States.

(c) The Subcontractor shall—

(1) Claim duty-free entry only for supplies that the Subcontractor intends to deliver to the Purchaser under this Subcontract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Subcontractor may otherwise agree, the Purchaser will obtain from the Government duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the Subcontract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Subcontractor, including the Subcontractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv) (A) For direct shipments to a U.S. military installation, the notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE-GNTF, 207 New York Avenue, Staten Island, New York, 10305-5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates."

(B) If the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to a trade agreement, the Contractor shall claim duty-free entry under the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, e.g., for DCMA Dayton, S3605A.

(f) Preparation of customs forms.

(1) (i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the customs territory of the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Subcontractor shall—

(1) Prepare (if the Subcontractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available

for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE"; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Subcontractor shall notify the Purchaser in writing of any purchase of eligible products or qualifying country supplies to be accorded duty-free entry, that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the supplier and shall include in the notice—

(1) The Subcontractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Subcontractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of eligible products or qualifying country supplies in connection with this Subcontract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Subcontractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Subcontractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for the prime contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

20. FAR SUPP 252.225-7015 RESTRICTION ON ACQUISITION OF HAND OR MEASURING TOOLS (JUNE 2005)

Hand or measuring tools produced delivered under this Subcontract shall be produced in the United States or its outlying areas.

21. FAR SUPP 252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUNE 2011)

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

(1) "Bearing components" means the bearing element, retainer, inner race, or outer race.

(2) "Component," other than a bearing component, means any item supplied to the Government as part of an end product or of another component.

(3) "End product" means supplies delivered under a line item of this contract.

(b) Except as provided in paragraph (c) of this clause—

(1) Each ball and roller bearing delivered under this contract shall be manufactured in the United States, its outlying areas, or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States, its outlying areas, or Canada shall exceed 50 percent of the total cost of the bearing components of that ball or roller bearing.

(c) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as—

(1) Commercial components of a noncommercial end product; or

(2) Commercial or noncommercial components of a commercial component of a noncommercial end product.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Subcontractor in accordance with subsection 225.7009-4 of the Defense Federal Acquisition Regulation Supplement.

(e) If this contract includes DFARS clause 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, all bearings that contain specialty metals, as defined in that clause, must meet the requirements of that clause.

(f) The Subcontractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

22. FAR SUPP 252.225-7021 TRADE AGREEMENTS (NOVEMBER 2014)

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

"Caribbean Basin country end product"

(i) Means an article that

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a

supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of:

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an end product.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement

(WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country end product" means a WTO GPA country end product, a Free Trade Agreement country end product, a least developed country end product, or a Caribbean Basin country end product.

"End product" means those articles, materials, and supplies to be acquired under this contract for public use.

"Free Trade Agreement country end product" means an article that:

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from

that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Least developed country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Nondesignated country end product" means any end product that is not a U.S.-made end product or a designated country end product.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, and United Kingdom of Great Britain and Northern Ireland.

"Qualifying country end product" means:

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-made end product" means an article that

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"WTO GPA country end product" means an article that

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Subcontractor shall deliver under this contract only U.S.-made, qualifying country, or designated country end products unless—

(1) In its offer, the Subcontractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2) (i) Offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

(d) The Subcontract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at http://www.usitc.gov/tata/hts/bychapter/index.htm. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act.

23. FAR SUPP 252.225-7036 BUY AMERICAN - FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM (NOVEMBER 2014)

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

"Bahrainian end product" means an article that—

i) Is wholly the growth, product, or manufacture of Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as

agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into an

end product.

"Domestic end product" means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that□

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American statute; or

(B) The end product is a COTS item.

"End product" means those articles, materials, and supplies to be acquired under this subcontract for public use.

"Foreign end product" means an end product other than a domestic end product.

"Free Trade Agreement country" means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore;

"Free Trade Agreement country end product" means an article that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Moroccan end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Panamanian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Peruvian end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

"Qualifying country" means a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum of agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. 2457. Accordingly, the following are qualifying countries:

Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, and United Kingdom of Great Britain and Northern Ireland.

"Qualifying country component" means a component mined, produced, or manufactured in a qualifying country.

"Qualifying country end product" means

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if—

(A) The cost of the following types of components exceeds 50 percent of the cost of all its components:

(1) Components mined, produced, or manufactured in a qualifying country.

(2) Components mined, produced, or manufactured in the United States.

(3) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) The end product is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Subcontractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic provision of the solicitation. If the Subcontractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

(d) The Subcontract price does not include duty for end products or components for which the Subcontractor will claim duty-free entry.

24. FAR SUPP 252.225-7044 BALANCE OF PAYMENTS PROGRAM -- CONSTRUCTION MATERIAL (NOVEMBER 2014)

(a) Definitions. As used in this clause—

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of

"commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost,

including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference. This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

_____

[Purchaser to list applicable excepted materials or indicate "none"]

25. FAR SUPP 252.225.7045 BALANCE OF PAYMANTS PROGRAM--CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (NOVEMBER 2014)

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

"Caribbean Basin country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Caribbean Basin

country; or

(ii) In the case of a construction material that consists in whole or in part of

materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

"Commercially available off-the-shelf (COTS) item"—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of "commercial item" in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form

in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

"Component" means any article, material, or supply incorporated directly into construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(i) For components purchased by the Contractor, the acquisition cost,

including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the Contractor, all costs associated

with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Designated country" means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Saint Eustatius, Saint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, a Free Trade Agreement country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

"Domestic construction material" means—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the

United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item.

"Free Trade Agreement country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different construction material distinct from the material from which it was transformed.

"Least developed country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a least developed country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"WTO GPA country construction material" means a construction material that—

(i) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction materials.

(c) The Subcontractor shall use only domestic or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

(3) The construction material or components listed by the Government as follows:

_____

[Purchaser to list applicable excepted materials or indicate "none"]

26. FAR SUPP 252.225-7050 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014)

(a) Definitions. As used in this provision—

"Government of a country that is a state sponsor of terrorism" includes the state and the government of a country that is a state sponsor of terrorism, as well as any political subdivision, agency, or instrumentality thereof.

"Significant interest" means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

“State sponsor of terrorism” means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Cuba, Iran, Sudan, and Syria.

(b) Prohibition on award. In accordance with 10 U.S.C. 2327, unless a waiver is granted by the Secretary of Defense, no contract may be awarded to a firm if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in—

(1) The firm;

(2) A subsidiary of the firm; or

(3) Any other firm that owns or controls the firm.

(c) Representation. Unless the Offeror submits with its offer the disclosure required in paragraph (d) of this provision, the Offeror represents, by submission of its offer, that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in—

(1) The Offeror;

(2) A subsidiary of the Offeror; or

(3) Any other firm that owns or controls the Offeror.

(d) Disclosure.

(1) The Offeror shall disclose in an attachment to its offer if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in the Offeror; a subsidiary of the Offeror; or any other firm that owns or controls the Offeror.

(2) The disclosure shall include—

(i) Identification of each government holding a significant interest; and

(ii) A description of the significant interest held by each government.

27. FAR SUPP 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL-BUSINESS CONCERNS (SEPTEMBER 2004)

(a) Definitions. As used in this clause --

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S. C. 1452(c) and any "Native" as defined in the Alaska Native Claim Settlement Act (43 U.S.C. 1601 et seq.).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. Chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452 (c).

"Interested party" means a subcontractor or an actual or prospective Subcontractor whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

“Native Hawaiian small business concern” means an entity that is-

(1) A small business concern as defined in Section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Subcontractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian

small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the subcontract.

(c) Purchaser and the Subcontractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Purchaser has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Purchaser will forward the challenge to the Contracting Officer who will refer the matter to-

(1)For matters relating to Indian Organizations or Indian-owned economic enterprises:

U.S. Department of Interior
Bureau of Indian Affairs
Attn. Chief, Division of Contracting and Grants Administration
1849 C Street NW, MS-2626-MIB
Washington, DC 20240-4000

The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns:

Department of Hawaiian Home Lands
PO Box 1879
Honolulu, HI 96805

The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made-

(1) While a challenge is pending; or
(2) If a subcontractor is determined to be an ineligible participant.

(f) (1) The Subcontractor, on its own behalf, or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Subcontractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern

(4) The Subcontractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Purchaser via the Contracting Officer, subject to the terms and conditions of the prime contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Purchaser requests and receives an incentive payment on behalf of a subcontractor, the Purchaser is obligated to pay the subcontractor the incentive amount.

(g) The Subcontractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding $500,000 for which further subcontracting opportunities may exist.

28. FAR SUPP 252.227-7013 RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS (FEBRUARY 2014)

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

(1) "Computer data base", means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) "Computer program", means a set of instructions, rules or routines recorded in a form that is capable of causing a

computer to perform a specific operation or series of operations.

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

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

(5) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the Prime Contractor or a first-tier subcontractor o the program or effort, r with any direct competitor of such prime contractor or such first tier subcontractor in furnishing end products or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

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

(7) "Developed", means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) "Developed exclusively at private expense", means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private or mixed expense.

(9) "Developed Exclusively with Government Funds", means, development was not accomplished exclusively or partially at private expense.

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

(11) "Form, fit, and function data", means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

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

(13) "Government purpose rights" means rights to

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(14) "Limited rights" means the right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole

or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if

(i) The reproduction, release, disclosure or use is -

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to –

(1) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or

(2) A foreign government, of technical data, other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to prohibition on the further reproduction, release, disclosure or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(16) "Unlimited rights", means rights to use, modify, reproduce, perform, display, release or disclose technical data in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in Technical Data.* The Subcontractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this subcontract for rights in computer software documentation):

(1) Unlimited Rights. The Government shall have unlimited rights in technical data that are --

(i) Data pertaining to an item, component, or process, which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this subcontract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction or production of items, components or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Subcontractor by the Purchaser or Government;

(vii) Otherwise publicly available or have been released or disclosed by the Subcontractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with-

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Subcontractor's exclusive right to use such data for commercial purposes has expired.

(2) Government purpose rights.

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data -

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless -

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Subcontractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this subcontract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) Limited rights.

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data -

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Subcontractor that the data have been destroyed.

(iii) The Subcontractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Subcontractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Subcontractor has grated the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

. (iv) The Subcontractor acknowledges that—

(A) Limited rights data is authorized to be released or disclosed to covered Government support contractors;

(B) The Subcontractor will be notified of such release or disclosure;

(C) The Subcontractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Subcontractor (or the party asserting restrictions) regarding the covered Government support contractor’s use of such data, or

alternatively, that the Subcontractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at 252.227-7025, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Subcontractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(14) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this subcontract.

(5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this subcontract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless -

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Subcontractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Subcontractor data marked with restrictive legends.

(c) *Subcontractor rights in technical data*. All rights not granted to the Government are retained by the Subcontractor.

(d) *Third party copyrighted data*. The Subcontractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this subcontract unless the Subcontractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.*

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

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Subcontractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this subcontract (the Attachment). The Subcontractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Subcontractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Subcontractor asserts itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted-

Technical data to be furnished with restrictions[1]	Basis for assertion[2]	Asserted rights category[3]	Name of person asserting restrictions[4]

[1]If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such items, component, or process.

[2]Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or

(List)	(List)	(List)	(List)

Date: _____

Printed Name and Title: _____

Signature: _____

(4) When requested by the Contracting Officer, the Subcontractor shall provide sufficient information to enable the Contracting Officer to evaluate the Subcontractor's assertions. The Contracting Officer reserves the right to add the Subcontractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this subcontract.

(f) *Marking requirements*. The Subcontractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this subcontract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this subcontract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause ; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Subcontractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Data delivered or otherwise furnished to the Government with government purpose rights shall be marked a follows:

Government Purpose Rights

Contract No.: _____
Contract Name: _____
Contract Address: _____
_____
Expiration Date: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data - Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

LIMITED RIGHTS

Contract No.: _____

Subcontractor Name: _____

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processes. Indicate whether development was not at private expense. If development was not private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3]Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

[4]Corporation, individual, or other person, as appropriate.

Subcontractor
Address: _____

_____

The Government's right to use, modify, reproduce, release perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Subcontractor.

(End of legend)

(4) Special license rights markings.

(i) Data in which in the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No.___(Insert contract number) License No. ___ (Insert license identifier) ___ Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing data markings. If the terms of a prior contract or license permitted the Subcontractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this subcontract, and those restrictions are still applicable, the Subcontractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Subcontractor procedures and records*. Throughout performance of this subcontract, the Subcontractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall-

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this subcontract.

(h) *Removal of unjustified and nonconforming markings*.

(1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this subcontract are contained in the Validation of Restrictive Markings on Technical Data clause of this subcontract. Notwithstanding any provision of this subcontract concerning inspection and acceptance, the Government may ignore or, at the Subcontractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this subcontract, a restrictive marking is determined to be unjustified.

(2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this subcontract that is not in the format authorized by this subcontract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this subcontract. If the Contracting Officer notifies the Subcontractor of a nonconforming marking and the Subcontractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Subcontractor's expense, remove or correct any nonconforming marking.

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

(j) *Limitation on charges for rights in technical data.*

(1) The Subcontractor shall not charge to this subcontract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this subcontract when --

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

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause --

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

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

(k) *Applicability to subcontractors or suppliers.*

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

(2) Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this subcontract, the Subcontractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Subcontractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor or supplier.

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

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

29. FAR SUPP 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEBRUARY 2014)

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

(1) "Commercial computer software" means software developed or regularly used for non-governmental purposes which --

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

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

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this subcontract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this subcontract.

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

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

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

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

(8) “Covered Government support contractor” means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor –

(i) Is not affiliated with the Prime Contractor or a first-tier subcontractor o the program or effort, r with any direct competitor of such prime contractor or such first tier subcontractor in furnishing end products or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(7) "Developed" means that

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) "Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

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

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

(12) "Government purpose rights" means the rights to --

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or compute software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States Government purposes.

(13) "Minor modification" means a modification that does not significantly alter the non-governmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(14) "Noncommercial computer software" means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(15) "Restricted rights" apply only to noncommercial computer software and mean the government's rights to --

(i) Use a computer program with one computer at one time. The program any not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Subcontract;

(ii) Transfer a computer program to another Government agency without the further permission of the Subcontractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may-

(A) Use the modified software only as provided in paragraphs (a)(14)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v) and (vi) of this clause.

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that --

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and nondisclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(15)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, to modify the computer software to reflect the repairs or overhaul made, provided that--

(A) The intended recipient is subject to the use and nondisclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(vii) Permit covered Government support contractors to use, modify, reproduce, perform, display, or release or disclose the computer software to authorized person(s) in the performance of Government contracts that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. .

(17) "Unlimited rights" means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation*. The Subcontractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Subcontractor.

(1) Unlimited rights. The Government shall have unlimited rights in --

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this subcontract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Subcontractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Subcontractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with --

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Subcontractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) Government purpose rights.

(i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless--

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227-7025,Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) Restricted rights.

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this subcontract that were developed exclusively at private expense.

(ii) The Subcontractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Subcontractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Subcontractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Subcontractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Subcontractor will be notified of such release or disclosure;

(C) The Subcontractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Subcontractor (or the party asserting restrictions) regarding the covered Government support contractor’s use of such software, or alternatively, that the Subcontractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions

unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Subcontractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Specifically negotiated license rights.

(i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14) of the Rights in Technical Data--Noncommercial Items clause of this subcontract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this subcontract.

(5) Prior government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this subcontract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless--

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Subcontractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(15) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released performed, displayed, or disclosed Subcontractor software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation*. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this subcontract that the Subcontractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation*. The Subcontractor shall not, without the written approval of the Contracting Officer, incorporate any copy-righted computer software or computer software documentation in the software or documentation to be delivered under this subcontract unless the Subcontractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such--

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure*.

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

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Subcontractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this subcontract (the Attachment). The Subcontractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Subcontractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

The Subcontractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer should be restricted:

Computer Software to be Furnished With	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting

Restrictions*			Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not a private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____
Printed Name and Title _____
Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Subcontractor shall provide sufficient information to enable the Contracting Officer to evaluate the Subcontractor's assertions. The Contracting Officer reserves the right to add the Subcontractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions--Computer Software clause of this subcontract.

(f) *Marking requirements*. The Subcontractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this subcontract: the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Subcontractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.: _____
Subcontractor Name: _____

Subcontractor Address: _____

_____

Expiration Date: _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights of Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of Legend)

(3) Restricted rights markings. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No.: _____

Subcontractor Name: _____

Subcontractor Address: _____

_____

_ The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software of portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Subcontractor.

(End of legend)

(4) Special license rights markings.

(i) Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend.

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No.____ (Insert Contract Number), License No.____ (Insert License Identifier), Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings

.

(End of Legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract see paragraph (b)(5) of this clause).

(5) Pre-existing markings. If the terms of a prior contract or license permitted the Subcontractor to restrict the Government's rights to use, modify release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Subcontractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The markings procedures in paragraphs (f)(1) of this clause shall be followed.

(g) Subcontractor *procedures and records*. Throughout performance of this subcontract, the Subcontractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights shall-

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this subcontract.

(h) *Removal of unjustified and nonconforming markings*.

(1) Unjustified computer software or computer software documentation markings. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this subcontract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this subcontract, respectively. Notwithstanding any provision of this subcontract concerning inspection and acceptance, the Government may ignore or, at the Subcontractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this subcontract that is not in the format authorized by this subcontract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this subcontract. If the Contracting Officer notifies the Subcontractor of a nonconforming marking or markings and the Subcontractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Subcontractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as

affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation*.

(1) The Subcontractor shall not charge to this subcontract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this subcontract when --

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

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause--

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

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

(k) *Applicability to Subcontractor and its lower tier subcontractors or suppliers*.

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

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Subcontractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227-7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Subcontractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

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

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

30. FAR SUPP 252.227-7015 TECHNICAL DATA -- COMMERCIAL ITEMS (FEBRUARY 2014)

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

(1) "Commercial item" does not include commercial computer software.

(2) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor –

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(3) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and

performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(4) The term "item" includes components or processes.

(5) "Technical data" means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b*) License*.

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

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

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

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

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

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

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not--

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Subcontractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Subcontractor acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause is authorized to be released or disclosed to covered Government support contractors;

(ii) The Subcontractor will be notified of such release or disclosure;

(iii) The Subcontractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Subcontractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Subcontractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement;

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) The Subcontractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(c) *Additional license rights*. The Subcontractor, its lower tier subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Subcontractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Subcontractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this subcontract. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability*. The Subcontractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this subcontract, shall have no liability for any release or

disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(e) *Applicability to Subcontractors and it lower tier subcontractors or suppliers*.

(1) The Subcontractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320 and 10 U.S.C. 2321.

(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this subcontract, the Subcontractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the clause at 252.227-7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

31. FAR SUPP 252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JANUARY 2011)

(a*) Definitions*.

(1) For subcontracts that require the delivery of technical data, the terms "technical data" and "computer software" are defined in the Rights in Technical Data-- Noncommercial Item clause of this subcontract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause of this subcontract.

(2) For subcontracts that do not require the delivery of technical data, the term "computer software" is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software Documentation clause of this subcontract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause of this subcontract.

(b) *Government rights prior to contract award*. By submission of its offer, the Subcontractor agrees that the Government--

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

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

(c) *Government rights subsequent to contract award*. The Subcontractor agrees--

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Subcontractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Subcontractor's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this subcontract are determined by the Rights in Technical Data--Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause(s) of this subcontract.

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

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

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

32. FAR SUPP 252.227-7017 IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JANUARY 2011)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation--

(1) If a successful Subcontractor will be required to deliver technical data, the Rights in Technical Data--Noncommercial Items clause, or if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(2) If a successful Subcontractor will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirement in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification and identification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Subcontractor, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Subcontractor's assertion, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Subcontractor:

Identification and Assertion of Restrictions on the Government s Use, Release, or Disclosure of Technical Data or Computer Software.

The Subcontractor asserts for itself, or the person identified below, that the Government s rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data of Computer Software to be furnished with Restrictions* (LIST)	Basis for Assertion ** (LIST)	Asserted Rights Category ***	Name of Person Asserting Restrictions ***(LIST)

* For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

** Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g. government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

**** Corporation, individual, or other person, as appropriate.

***** Enter "none" when all data or software will be submitted without restrictions.

Date: _____

Printed Name and Title: _____

Signature: _____

(End of identification and assertion)

(e) An Subcontractor's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Subcontractor is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Subcontractor shall provide sufficient information enable the Contracting Officer to evaluate any listed assertion.

33. FAR SUPP 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS -- COMPUTER SOFTWARE (SEPTEMBER 2011)

(a) *Definitions*.

(1) As used in this clause, unless otherwise specifically indicated, the term "Subcontractor" means the Subcontractor and its Subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this subcontract.

(b) *Justification*. The Subcontractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this subcontract and shall be prepared to furnish to the Purchaser Subcontract Manager a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) *Direct contact with Subcontractors or suppliers*. The Subcontractor agrees that the Government Contracting Officer may transact matters under this clause directly with Subcontractors or suppliers at nay tier who assert restrictions on the Government s right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of subcontract between the Government and the Subcontractor s Subcontractors or suppliers.

(d) *Requests for information*.

(1) The Purchaser Subcontract Manager may request the Subcontractor to provide sufficient information to enable the Government Contracting Officer to evaluate the Subcontractor s asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Subcontractor.

(2) Based upon the information provided, if the--

(I) Subcontractor agrees that an asserted restriction is not valid, the Government Contracting Officer may--
(A) Strike or correct the unjustified marking at the Subcontractors expense; or

(B) Return the computer software to the Subcontractor for correction at the Subcontractor s expense. If the Subcontractor fails to correct or strike the unjustified restrictions and return the corrected software to the Government Contracting Officer within sixty (60) days following receipt of the software, the Government Contracting Officer may correct the strike the markings at the Subcontractors expense.

(ii) Government Contracting Officer concludes that the asserted restriction is appropriate for this subcontract, the Government Contracting Officer shall so notify the Subcontractor in writing.

(3) The Subcontractor s failure to provide a timely response to a Government Contracting Officer s request for information for failure to provide sufficient information to enable the Government Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) *Government right to challenge and validate asserted restrictions*.

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Subcontractor on the Government s rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this subcontract, or otherwise provided to the Government in the performance of this subcontract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this subcontract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Government Contracting Officer s final decision or actions of an agency Board of Subcontract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Major systems.* When the Government Contracting Officer challenges an asserted restriction regarding noncommercial computer software for a major system or a subsystem or component thereof on the basis that the computer software was not developed exclusively at private expense, the Government Contracting Officer will sustain the challenge unless information provided by the Subcontractor or lower tier subcontractor demonstrates that the computer software was developed exclusively at private expense.

(g) *Challenge procedures.*

(1) A challenge must be in writing and shall--

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Subcontractor to respond within sixty (60) days;

(iii) Require the Subcontractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Subcontractor, in sufficient detail to enable the Government Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Government Contracting Officer s final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Subcontractor (or a licensee) shall serve as justification for the asserted restriction.

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

(3) The Government Contracting Officer may request additional supporting documentation if, in the Government Contracting Officer s opinion, the Subcontractor s explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Subcontractor agrees to promptly respond to the Government Contracting Officer s request for additional supporting documentation.

(4) Notwithstanding challenge by the Government Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Government Contracting Officer s final decision or, if the Subcontractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Subcontractor fails to respond to the Government Contracting Officer s request for information or additional information under paragraph (g)(1) of this clause, the Government Contracting Officer shall issue a final decision, in accordance with paragraph (f) of this clause and the Disputes clause of the Prime Contract, pertaining to the validity of the asserted restriction.

(6) If the Government Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction-

(i) Not been justified, the Government Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this subcontract, denying the validity of the asserted restriction; or

(ii) Been justified, the Government Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this subcontract, validating the asserted restriction.

(7) A Subcontractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Subcontractor shall formulate and distribute a schedule that provides the Subcontractor a reasonable opportunity for responding to each challenge.

(h) *Subcontractor appeal -- Government obligation.*

(1) The Government agrees that, notwithstanding a Government Contracting Officers final decision denying the validity of an asserted restriction and except as provided in paragraph (h)(3) of this clause, it will honor the asserted restriction --

(i) For a period of ninety (90) days from the date of the Government Contracting Officer s final decision to allow the Subcontractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Government Contracting Officer s final decision if, within the first ninety (90) days following the Government Contracting Officer s final decision, the Subcontractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the

Subcontractor has:

(A) appealed to the Board of Contract Appeals or filed with an appropriate court within ninety (90) days; or

(B) submitted, within ninety (90) days, a notice of intent to file with in an appropriate court and filed suit within one year.

(2) The Subcontractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Subcontractor fails to --

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Government Contracting Officer s final decision;

(ii) file suite in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Government Contracting Officer s final decision if the Subcontractor had provided notice of intent to file suit within ninety (90) days following the date of the Government Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Subcontractor of the urgent or compelling circumstances. Notwithstanding paragraph (h)(1) of this clause, the Subcontractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Subcontractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(i) *Final disposition of appeal or suit*. If the Subcontractor appeals or files suit and if, upon final disposition of the appeal or suite, the Government Contracting Officer's decision is:

(1) Sustained--

(i) Any restrictive marking on such computer software shall be struck or corrected at the Subcontractor s expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Subcontractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained --

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Subcontractor in defending the restriction.

(j) Flowdown. The Subcontractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its Subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of the Prime Contract. The clause may not be altered other than to identify the appropriate parties.

34. FAR SUPP 252.227-7020 RIGHTS IN DATA -- SPECIAL WORKS (JUNE 1995)

(a) Applicability. This clause applies to works first created, generated, or produced and required to be delivered under this subcontract.

(b) Definitions. As used in this clause:

(1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term

does not include computer software.

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

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

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

(5) "Unlimited rights" means the rights to use, modify, reproduce, perform, display, release, or disclose a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(6) The term "works" includes computer databases, computer software, or computer software documentation; literary. musical, choreographic, or dramatic compositions; pantomimes; pictorial, graphic, or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or. items of similar nature.

(c) License rights.

(1) The Government shall have unlimited rights in works first produced, created, or generated and required to be delivered under this subcontract.

(2) When a work is first produced, created, or generated under this subcontract, and such work is required to be delivered under this subcontract, the Subcontractor shall assign copyright in those works to the Government. The Subcontractor, unless directed to the contrary by the Purchaser Subcontract Manager, shall place the following notice on such works:

"© (Year date of delivery) United States Government, as represented by the Secretary of (department). All rights reserved."

For phonorecords, the "©" marking shall be replaced by a "P".

(3) The Subcontractor grants to the Government a royalty-free, world-wide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Subcontractor's copyrighted works not first produced, created, or generated under this subcontract that have been incorporated into the works deliverable under this subcontract.

(d) Third party copyrighted data.

The Subcontractor shall not incorporate, without the written approval of the Purchaser Subcontract Manager any copyrighted works in the works to be delivered under this subcontract unless the Subcontractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license of the scope Identified in paragraph (c)(3) of this clause and, prior to delivery of such works-

(1) Has affixed to the transmittal document a statement of the license rights obtained; or

(2) For computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) Indemnification. The Subcontractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, use, modification, reproduction, release, performance. display, or disclosure of any works furnished under this subcontract, or (2) based upon any libelous or other unlawful matter contained in such works

(f) Government-furnished information. Paragraphs (d) and (e) of this clause are not applicable to information furnished to the Subcontractor by the Government and delivered under this subcontract.

35. FAR SUPP 252.227-7021 RIGHTS IN DATA -- EXISTING WORKS (MAR 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to subcontract administration.

(b) Except as otherwise provided in this subcontract, the Subcontractor hereby grants to the Government a nonexclusive, paid-up license

throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this subcontract and (2) to authorize others to do so for Government purposes.

(c) The Subcontractor shall indemnify and save and hold harmless the Government, Purchaser, their officers, agents, and employees acting for the Government or Purchaser, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this subcontract, or (2) based upon any libelous or other unlawful matter contained in same works.

36. FAR SUPP 252.227-7022 GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this subcontract, including the right to use same on any other Government design or construction without additional compensation to the Subcontractor. The Subcontractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Subcontractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Purchaser Subcontract Manager.

37. FAR SUPP 252.227-7023 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this subcontract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Subcontractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Subcontractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Subcontractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Purchaser Subcontract Manager. Unless otherwise provided in this subcontract, the Subcontractor shall have the right to retain copies of all works beyond such period.

38. FAR SUPP 252.227-7024 NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

In the performance of this subcontract, the Subcontractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Purchaser Subcontract Manager, the Subcontractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Subcontractor to be available only from a sole source. The Subcontractor shall promptly report any such design or specification to the Purchaser Subcontract Manager and give the reason why it is considered necessary to so restrict the design or specification.

39. FAR SUPP 252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MARCH 2013)

(a)(1) For subcontracts requiring the delivery of technical data, the terms "limited rights" and Rights in Technical Data - Noncommercial Items clause of this subcontract.

(2) For contracts in which the Government will furnish the Prime Contractor with computer software or computer software documentation, the terms "covered Government support contractor," "government purpose rights," and "restricted rights" are defined in the clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms "covered Government support contractor," "limited rights," "restricted rights," and "SBIR data rights" are defined in the clause at 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

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

(1) *GFI marked with limited rights, restricted rights, or SBIR data rights legends.*

(i) The Subcontractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer

software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract. The Subcontractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Subcontractor is a covered Government support contractor, the Subcontractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) *GFI marked with government purpose rights legends.* The Subcontractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Subcontractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Subcontractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure
agreement at 227.7103-7.

(3) *GFI marked with specially negotiated license rights legends.*

(i) The Subcontractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or
software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at 227.7103-7. The Subcontractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Subcontractor is a covered Government support contractor, the Subcontractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends.*

(i) The Subcontractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Subcontractor is a covered Government support contractor, the Subcontractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) *Covered Government support contractors.* If the Subcontractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii), the Subcontractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non-Government contract;

(ii) The Subcontractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Subcontractor will ensure that the party whose name appears in the legend is notified of the access or use within thirty (30) days of the Subcontractor's access or use of such data or software;

(iv) The Subcontractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Subcontractor's use of such data or software as set forth in this clause. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) That a breach of these obligations or restrictions may subject the Subcontractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) *Indemnification and creation of third party beneficiary rights.* The Subcontractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Subcontractor or any person to whom the Subcontractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Subcontractor, or any person to whom the Subcontractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(d) The Subcontractor shall ensure that its employees are subject to use and non-disclosure obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

(2) For subcontracts that do not require the delivery of technical data, the terms "government purpose rights" and "restricted rights" are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this subcontract.

(3) For Small Business Innovative Research program subcontracts, the terms "limited rights" and "restricted rights" are defined in the Rights in Noncommercial Technical Data and Computer Software -- Small Business Innovative Research (SBIR) Program clause of this subcontract.

40. FAR SUPP 252.227-7030 TECHNICAL DATA -- WITHHOLDING OF PAYMENT (MARCH 2000)

(a) If technical data specified to be delivered under this subcontract, is not delivered within the time specified by this subcontract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(e)(2) or 252.227-7018(e)(2), the Purchaser Subcontract Manager may until such data is accepted by the Government, withhold payment to the Subcontractor of ten percent (10%) of the total subcontract price or amount unless a lesser withholding is specified in the subcontract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Subcontractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Subcontractor.

(b) The withholding of any amount or subsequent payment to the Subcontractor shall not be construed as a waiver of any rights accruing to the Purchaser under this subcontract.

41. FAR SUPP 252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Subcontractor, 2nd tier Subcontractor or any lower-tier subcontractor pursuant to a construction subcontract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this subcontract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

42. FAR SUPP 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (JUNE 2013)

(a) *Definitions*. The terms used in this clause are defined in the Rights in Technical Data--Noncommercial Items of this Subcontract.

(b) *Presumption regarding development exclusively at private expense*.

(1) *Commercial items*. For commercially available off-the-shelf items (defined at 41 U.S.C. 104) in all cases, and for all other commercial items except as provided in paragraph (b) (2) of this clause, the Contracting Officer will presume that a Purchaser's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Contracting Officer shall not challenge such assertions unless the Contracting Officer has information that demonstrates that the item, component, or process was not developed exclusively at private expense.

(2) *Major systems.* The presumption of development exclusively at private expense does not apply to major systems or subsystems or components thereof, except for commercially available off-the-shelf items (which are governed by paragraph (b)(1)) of this clause. When the Contracting Officer challenges an asserted restriction regarding technical data for a major system or a

subsystem or component thereof on the basis that the item, component, or process was not developed exclusively at private expense, the Contracting Officer will sustain the challenge unless information provided by the Purchaser or subcontractor demonstrates that the item, component, or process was developed exclusively at private expense.

(c) *Justification.* The Purchaser or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the subcontract. Except as provided in paragraph (b)(1) of this clause, the Purchaser or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.*

(1) The Contracting Officer may request the Subcontractor or subcontractor to furnish a written explanation for any restriction asserted by the Purchaser or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Purchaser or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Purchaser or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Purchaser or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

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

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

(e) *Challenge.*

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Purchaser or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Subcontractor or subcontractor (or any licensee of Purchaser or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Subcontractor's or subcontractor's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

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

(f) *Final decision when Purchaser or subcontractor fails to respond.* Upon a failure of Purchaser or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Subcontractor in accordance with paragraph

(b) of this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) *Final decision when Purchaser or subcontractor responds.*

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

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

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Purchaser or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Purchaser subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Purchaser or subcontractor to take the required action constitutes agreement with such Government action.

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

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

(h) *Final disposition of appeal or suit.*

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

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Purchaser or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

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

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

(ii) The Government shall be liable to the Purchaser or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Purchaser or subcontractor in defending the marking, if the challenge

by the Government is found not to have been made in good faith.

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Purchaser or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(j) *Decision not to challenge*. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(k) *Privity of contract.* The Purchaser or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown.* The Purchaser or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

43. FAR SUPP 252.227-7039 PATENTS -- REPORTING OF SUBJECT INVENTIONS (APR 1990)

The Subcontractor shall furnish the Purchaser Subcontract Manager the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Purchaser Subcontract Manager) from the date of the Subcontract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Subcontractor has retained title.

(d) Upon request, the Subcontractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

44. FAR SUPP 252.231-7000 SUPPLEMENTAL COST PRINCIPLES (APRIL 2012)

When the allowability of costs under this Subcontract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this Subcontract.

45. FAR SUPP 252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN (DEC 1991)

(a) The Subcontractor shall furnish a price breakdown, itemized as required and within the time specified by the Purchaser Subcontract Manager, with any proposal for a Subcontract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;
(ii) Labor;
(iii) Equipment;
(iv) Subcontracts; and
(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Subcontractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Subcontractor's proposal shall include a justification for any time extension proposed.

46. FAR SUPP 252.236-7001 SUBCONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUGUST 2000)

(a) The Purchaser will provide the Subcontractor, without charge, _____ sets (five unless otherwise specified) of large-scale subcontract drawings and specifications except publications incorporated into the technical provisions by reference in electronic media or paper media as chosen y the Purchaser.

(b) The Subcontractor shall --

(1) Check all drawings furnished immediately upon receipt;
(2) Compare all drawings and verify the figures before laying out the work;
(3) Promptly notify the Purchaser Subcontract Manager of any discrepancies; and
(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b), and
(5) Reproduce and print suocntract6 drawings and specifications as needed.

(c) In general large-scale drawings shall, in general, govern small-scale drawings and the subcontractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Subcontractor from performing such omitted or misdescribed details of the work. The subcontractor shall be perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the subcontract drawings identified on the following index of drawings:

Title File and Drawing No.

47. FAR SUPP 252.236-7013 REQUIREMENT FOR COMPETITION OPPORTUNITY FOR AMERICAN STEEL PRODUCERS, FABRICATORS, AND MANUFACTURERS (JUN 2013)

(a) *Definition*. "Construction material," as used in this clause, means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work.

(b) The Subcontractor shall provide American steel producers, fabricators, and manufacturers the opportunity to compete when acquiring steel as a construction material (e.g., steel beams, rods, cables, plates).

(c) The Subcontractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial items.

48. FAR SUPP 252.243-7001 PRICING OF SUBCONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this subcontract, the Subcontract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this subcontract, apply.

49. FAR SUPP 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JUNE 2013)

(a) The Subcontractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial items at any tier under this contract, unless so specified in the particular clause.

(b) While not required, the Subcontractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligation.

(c) The Subcontractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this Subcontract, including subcontracts for the acquisition of commercial items.

50. FAR SUPP 252.247-7016 SUBCONTRACTOR LIABILITY FOR LOSS OR DAMAGE (APRIL 2014)

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

"Article" means any shipping piece or package and its contents.

"Schedule" means the level of service for which specific types of traffic apply as described in DoD 4500.34-R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Subcontractor agrees to indemnify the Purchaser and the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.* For any cause, other than the Subcontractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Subcontractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Subcontractor shall make prompt payment to the owner of the property for any loss or damage for which the Subcontractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Subcontractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Subcontractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The subcontractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

51. FAR SUPP 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MARCH 2000)

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

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Subcontractor or any 2nd tier Subcontractor.

(2) "Department of Defense (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "2nd tier subcontractor" means a supplier, materialman, distributor, or vendor at any level below the Subcontractor whose contractual obligation to perform results from, or is conditioned upon, award of the Prime contract to the Purchaser and who is performing any part of the work or other requirement of the Prime contract for the Purchaser.

(6) "Supplies" means all property, except land and interests in land that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the Subcontract documentation contains a reference to a DoD Contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Subcontractor shall use U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this subcontract.

(2) A subcontractor transporting supplies by sea under this subcontract shall use U.S.-flag vessels, if

(i) The subcontract is a construction subcontract; or

(ii) The supplies being transported are (A) non commercial items or (B) Components that (1) the subcontractor is reselling or distributing to the Government without adding value (generally the subcontractor does not add value to items that it subcontractors for f.o.b. destination shipment); (2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed I humanitarian or peacekeeping operations; or (3) Are commissary or exchange cargoes transported outside of the Defense Tranap0ortation System in accordance with 10 U..C. 2643.

(c) The Subcontractor and its lower tier subcontractors may request that the Purchaser authorize shipment in foreign-flag vessels, or designate available U.S. Flag vessels, if the Subcontractor or a lower tier subcontract believe-

(1) U.S. flag vessels are not available for timely shipment;
(2) The freight charges are inordinately excessive or unreasonable; or
(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Subcontractor must submit any request for use of other than U.S.-flag vessels in writing to the Purchaser Subcontract Manager at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Purchaser Subcontract Manager will process requests submitted after such date(s) as expeditiously as possible, but the Purchaser Subcontract Manager's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this subcontract. Requests shall contain at a minimum--

(1) Type, weight, and cube of cargo;
(2) Required shipping date;
(3) Special handling and discharge requirements;
(4) Loading and discharge points;
(5) Name of shipper and consignee;
(6) Prime contract number, and
(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Subcontractor shall, within 30 days after each shipment covered by this clause, provide the Purchaser Subcontract Manager and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information --

(1) Prime contract number;
(2) Name of vessel;
(3) Vessel flag of registry;
(4) Date of loading;
(5) Port of loading;
(6) Port of final discharge;
(7) Description of commodity;
(8) Gross weight in pounds and cubic feet if available;
(9) Total ocean freight in U.S. dollars; and
(10) Name of the steamship company.

(f) The Subcontractor shall provide with its final invoice under this subcontract a representation that to the best of its knowledge and belief --

(1) No ocean transportation was used in the performance of this subcontract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the Subcontract;

(3) Ocean transportation was used, and the Subcontractor had the written consent of the Purchaser Subcontract Manager for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Purchaser Subcontract Manager. The Subcontractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	SUBCONTRACT LINE ITEMS	QUANTITY
TOTAL			

(g) In the event there has been an unauthorized use of non-U.S.-flag vessels in the performance of this subcontract, the Purchaser's Subcontract Manager is entitled to equitably adjust the subcontract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Subcontractor shall flow down the requirements of this clause as follows:

(1) The Subcontractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(2) The Subcontractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

52. FAR SUPP 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MARCH 2000)

(a) The Subcontractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this subcontract, the Subcontractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this subcontract, will be transported by sea, the subcontractor--

(1) Shall notify the Purchaser Subcontract Manager of that fact; and
(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this subcontract.

(b) The Subcontractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) in all subcontracts hereunder if this is a subcontract for construction or

(2) if this is not a construction subcontract, in all subcontracts that are for

(A) noncommercial items or

(B) commercial items that (i) the subcontractor is reselling or distributing to the Government without adding value generally, the Subcontractor does not add value to items that it subcontract for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. Military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; (or (iii) are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.