

## **SUBCONTRACTOR FAR/ DFAR FLOW DOWN PROVISIONS**

**NOTE:** These draft subcontract flowdown clauses may be modified as needed in response to the Government's requests, specifics of the concept of operation, or other legal or operational requirements. EOS will not be responsible for a subcontractor's refusal to accept these flowdown clauses as they may be modified in discussions with the Government.

The clauses referenced below outline Seller's minimum obligations and do not negate any other obligations set forth in the Subcontract. The full text of FAR and DFARS clauses can be found at <http://www.aquisition.gov>. The additional clauses listed below are also part of the Agreement by reference.

For the purpose of this introduction and the headings below, the term Subcontract encompasses any agreement between EOS Defense Systems (Buyer) and Seller, including Subcontracts, Task Orders, Purchase Orders, Basic Ordering Agreements, and Orders.

The applicable version of each clause will be the one that applies to EOS under its prime contract or higher-tier subcontract. In all instances, clauses will be interpreted to apply to Seller in a way that reflects their position as a subcontractor to EOS, ensures Seller's obligations to EOS, and allows EOS to fulfill its obligations to its customer.

To clarify: (1) unless specifically required by the clause or law, "Contractor" refers to Seller, "Contract" refers to the Subcontract, "Subcontractor" refers to Seller's subcontractor, and "Government," "Contracting Officer," or similar terms refer to EOS and EOS's Contractual Representative; and (2) when a clause specifies a number of days for Seller to act, that number is halved. Seller must also include relevant clauses in their subcontracts with lower-tier suppliers as specified in the clauses.

**Full text of these clauses can be obtained from the following websites:** <https://acquisition.gov/browse/index/far>

IT IS THE RESPONSIBILITY OF SELLER TO COMPLY WITH THE FAR/DFARS CLAUSES/PROVISIONS APPLICABLE TO SELLER, THE REQUIREMENTS OF THE PURCHASE ORDER, AND THE PRIME CONTRACT. THE FAR/DFARS CLAUSES/PROVISIONS SET FORTH HEREIN ARE INCLUDED AS A REFERENCE FOR SUPPLIERS AND SUBCONTRACTORS AND SHOULD NOT BE REFERRED TO BE AN ALL INCLUSIVE LIST OF THE FAR/DFARS CLAUSES/PROVISIONS WHICH WOULD APPLY TO SUBCONTRACTOR, THE REQUIREMENTS OF THE PURCHASE ORDER, OR THE PRIME CONTRACT.

This contractor and subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Vietnam Era Veterans' Readjustment Assistance Act of 1974. This law, sometimes referred to as VEVRAA, requires employers doing business with the Federal Government to take steps to recruit, hire and promote protected veterans. It also makes it illegal for these companies to discriminate against protected veterans when making employment decisions on hiring, firing, pay, benefits, job assignments, promotions, layoffs, training, and other employment related activities. Protected Veteran Clause.

### **SUBPART A**

**The following Federal Acquisition Regulation ("FAR") clauses are incorporated by reference:**

#### **Applicable to All Subcontracts**

- 52.203-3 Gratuities
- 52.222-21 Prohibition of Segregated Facilities
- 52.222-50 Combating Trafficking in Persons
- 52.203-17 Contractor Employee Whistleblower Rights.
- 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.
- 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities. (Includes COTs items and services. Contractor will timely provide EOS with a copy of any notice that Contractor provides to the government under this clause) Read full FAR for reporting requirements.
- 52.212-5 (e.): Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items. Please review FAR 52.212-5 section "e" for a list of ALL FARs, Terms and conditions and Executive orders that are applicable to COTs items or services. Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated, the extent of the flow down shall be as required by the clause.

## **SUBCONTRACTOR FAR/ DFAR FLOW DOWN PROVISIONS**

- 52.222-21 Prohibition of Segregated Facilities. (The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract).
- 52.222-26 Equal Opportunity (Sept. 2016) [Required for subcontracts not exempted by the rules, regulations, or orders of the Secretary of Labor]
- 52.242-15 Stop-Work Order (Aug. 1989) [an extension of time authorized by paragraph (a) will be made upon agreement between EOS and ant the U.S. Government; Alternate I (Apr 1984) applies if this Agreement is a cost-reimbursement subcontract; the value of any disputed adjustment or costs associated with termination will be determined by a good faith subcontractor claim submitted by EOS to the U.S. Government under the Disputes clause of the applicable EOS agreement(s) with the U.S. Government]
- 52.244-6 Subcontracts for Commercial Products and Commercial Services. **(Required for subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract).** Please review FAR 52.244-6 for a list of ALL FARs that are applicable to COTs items or services.
- 52.249-2 Termination for Convenience of the Government (Fixed-Price) (Apr. 2012) [paragraph (d) does not apply; the time period for submitting a termination settlement proposal under paragraph (e) will be 6 months; the time period for submitting a request for equitable adjustment under paragraph (j) will be 45 days; any appeal through paragraph (j) will be made through a good faith subcontractor claim submitted by EOS under the Disputes clause of the applicable EOS agreement with the U.S. Government; applicable only if this Agreement is a fixed-price subcontract]
- 52.249-6 Termination (Cost-Reimbursement) (May 2004) [paragraph (e) does not apply; the time period for submitting a termination settlement proposal under paragraph (f) will be 6 months; any appeal through paragraph (j) will be made through a good faith subcontractor claim submitted by EOS under the Disputes clause of the applicable EOS agreement(s) with the U.S. Government; applicable only if this Agreement is a cost-reimbursement subcontract and is not for research and development to be conducted by an educational or nonprofit institution on a nonprofit or no-fee basis; alternate IV applies if this Agreement is a time-and-materials or labor-hour agreement]
- 52.225-13 Restrictions on Certain Foreign Purchases (Feb. 2021) Applicable to all subcontracts.

### **Applicable to Subcontracts Over \$10,000**

- 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.) (The clause applies to contracts where the **value exceeds \$10,000**)
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec. 2010) [Required for subcontracts that exceed \$10,000 and will be performed wholly or partially in the United States, unless exempted by rules, regulations, or orders of the Secretary of Labor (e.g., specifically exempted subcontracts)]
- 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (June 2020) [Required for subcontracts in excess of \$10,000]
- 52.225-2 Buy American Certificate (MAY 2014)
- 52.225-4 Buy American – Free Trade Agreement – Israeli Trade Act Certificate (MAY 2014)

### **Applicable to Subcontracts Over \$15,000**

- 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000. (JUN 2020)
- 52.222-36 Equal Opportunity for Workers with Disabilities (JUN 2020)
- 52.225-8 Duty Free Entry (OCT 2010)

### **Applicable to Purchase Orders over \$25,000**

- 52.226-6 Promoting Excess Food Donation to Nonprofit Org. (JUN 2020)

### **Applicable to Subcontracts Over \$35,000**

- 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

### **Applicable to Subcontracts Over \$150,000**

- 52.203-7 Anti-Kickback Procedures (excluding (c)(1))
- 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions

## **SUBCONTRACTOR FAR/ DFAR FLOW DOWN PROVISIONS**

- 52.222-35 Equal Opportunity for Veterans (June 2020) [Require for subcontracts in excess of \$150,000, unless exempted by rules, regulations, or orders of the Secretary of Labor (e.g., specifically exempted subcontracts)]
- 52.222-36 Equal Opportunities for Workers with Disabilities (June 2020) [Required for subcontracts in excess of \$150,000 unless performance of work and recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, or otherwise exempted by rules, regulations, or orders of the Secretary of Labor (e.g., specifically exempted subcontracts)]
- 52.222-37 Employment Reports on Veterans (June 2020) [Required for subcontracts in excess of \$150,000, unless exempted by rules, regulations, or orders of the Secretary of Labor (e.g., specifically exempted subcontracts)]

### **Applicable to Subcontracts Over the Simplified Acquisition Threshold of \$250,000**

- 52.203-6 Restrictions on Subcontractor Sales to the Government with Alternate I
- 52.203-16 Preventing Personal Conflicts of Interest (if Subcontract includes acquisition functions closely associated with inherently governmental functions).
- 52.203-14 Display of Hotline Poster(s).
- 52.215-2 Audit and Records-Negotiation.
- 52.215-14 Integrity of Unit Prices. (Nov 2021) (does not include COTS item, construction or architect-engineer services under FAR part 36; utility services under FAR part 41; services where supplies are not required; commercial products and commercial services; and petroleum products).
- 52.227-1 Alt I Authorization and Consent (June 2020) - Alt I (Apr. 1984) [Required for subcontracts in excess of \$250,000]
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (June 2020) [Required for subcontracts in excess of \$250,000]
- 52.248-1 Value Engineering (June 2020) [Applicable to subcontracts in excess of \$250,000]

### **Applicable to Subcontracts Over \$500,000**

- 52.222-50 Combating Trafficking in Persons. (Nov 2021) (Applicable in all subcontracts and in all contracts with agents for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States. [EOS may terminate this Agreement, for violation of paragraph (b); if a certification is required under paragraph (h)(5), Contractor will submit the certification at FAR 52.222-56 before award and during performance of this Agreement])
- 52.204-14 Service Contract Reporting Requirements. (OCT 2016)
- 52.204-15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts. (OCT 2016)

### **Applicable to Subcontracts Over \$2,000,000**

- 52.215-12 Subcontractor Certified Cost or Pricing Data. (June 2020) (applicable to Proposal pricing, Original pricing or Modifications that cause price to exceed \$2 MM)
- 52.215-13 Subcontractor Certified Cost or Pricing Data-Modifications.
- 52.215-15 Pension Adjustments and Asset Reversions. (Only applicable if certified cost or pricing data has been requested by EOS or at pre-award or post award cost determinations will be subject to FAR Part 31)
- 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions. (Only applicable if certified cost or pricing data has been requested by EOS or at pre-award or post award cost determinations will be subject to FAR Part 31)
- 52.215-19 Notification of Ownership Changes. (Applies to "make or buy program" FAR part 15.408 and or if certified cost or pricing data has been requested by EOS or at pre-award or post award cost determinations will be subject to FAR Part 31)
- 52.215-23 Limitations on Pass-Through Charges. (June 2020) [Required for cost-reimbursement and fixed price subcontracts in excess of \$2 million, unless the subcontract is (i) a firm-fixed-price contract awarded on the basis of adequate price competition; (ii) a fixed-price contract with economic price adjustment awarded on the basis of adequate price competition; (iii) a firm-fixed-price contract for the acquisition of a commercial product or commercial service; (iv) a fixed-price contract with economic price adjustment, for the acquisition of a commercial product or commercial service; (v) a fixed-price incentive contract awarded on the basis of adequate price competition; or (vi) A fixed-price incentive contract for the acquisition of a commercial product or commercial service]

### **Applicable to Subcontracts Over \$6,000,000**

- 52.203-13 Contractor Code of Business Ethics and Conduct

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52.203-14 Display of hotline posters (June 2020)

### **FARS Applicable Only to the Extent Indicated (Please review all below for applicability to your subcontract)**

- 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (if Subcontract is funded in whole or in part with **Recovery Act funds**)
- 52.204-2 Security Requirements (if Subcontract involves access to classified information)
- 52.204-9 Personal Identity Verification of Contractor Personnel (if Seller has access to Government facilities or systems)
- 52.204-15 Service Contract Reporting Requirements for **Indefinite-Delivery Contracts (IDIQ)**.
- 52.204-21 Basic Safeguarding of Covered Contractor Information System (is Seller may have Federal contract information, as defined in the clause, residing in or transiting through its information system) **Not applicable for COTS purchases.**
- 52.211-5 Material Requirements. (applicable to used, remanufactured, or reconditioned supplies or materials intended for use in performance of the contract).
- 52.211-15 Defense Priority and Allocation Requirements (applies if the Subcontract is a rated order under subject to 15 C.F.R. 700)
- 52.216-7 Allowable Cost and Payment (Aug. 2018) [Applicable only if contract is cost-reimbursement or time-and-materials type contract]
- 52.219-8 Utilization of Small Business Concerns (Oct. 2018) [Applicable only if the Agreement offers further subcontracting opportunities; required for subcontracts valued over \$750,000]
- 52.222-4 Contract Work Hours and Safety Standards -Overtime Compensation. (The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause).
- 52.222-26 Equal Opportunity (Sept. 2016) [Required for subcontracts not exempted by the rules, regulations, or orders of the Secretary of Labor]
- 52.222-41 Service Contract Labor Standards (if Subcontract is subject to the Service Contract Labor Standards statute)
- 52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (if services meet all requirements for exemption)
- 52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements (if services meet all requirements for exemption)
- 52.222-54 Employment Eligibility Verification (Oct. 2015) [Required for service or construction subcontracts, performed in the United States, with a **value of more than \$3,500**; does not apply to commercial services that are part of the purchase of a COTS item]
- 52.222-55 Minimum Wages Under Executive Order 13658 (if Subcontract is subject to Service Contract Labor Standards statute)
- 52.222-62 Paid Sick Leave Under Executive Order 13706 (if Subcontract is subject to the Service Contract Act, Davis-Bacon Act, or the Fair Labor Standards Act, but only to the extent work is performed in the United States)
- 52.223-11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (if Subcontract is for products or services specified in FAR 23.804(a))
- 52.223-12 Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (if work includes maintenance, repair, or disposal of refrigeration equipment or air conditioners)
- 52.223-20 Aerosols (if Subcontract is for products that contain a propellant or solvent or involves maintenance or repair of electronic or mechanical devices)
- 52.223-21 Foams (if Subcontract is for products that contain a foam blowing agent)
- 52.224-2 Privacy Act (if Subcontract involves system of records on individuals subject to the Privacy Act)
- 52.225-26 Contractors Performing Private Security Functions Outside the United States (if Subcontract meets the requirements in paragraph (f) of the clause)
- 52.226-6 Promoting Excess Food Donation (if Subcontract exceeds \$30,000 and involves provision, service, or sale of food)
- 52.227-10 Filing of Patent Applications – Classified Subject Matter (if work or patent application may cover classified matters)
- 52.227-11 Patent Rights – Ownership by the Contractor (if Subcontract includes experimental, developmental, or research work and no other Patent Rights clause is specified)
- 52.228-3 Worker’s Compensation Insurance (Defense Base Act) (July 2014) [**Required for subcontracts to which the Defense Base Act applies. Required for subcontracts that require work on a government installation**]
- 52.228-5 Insurance - Work on a Government Installation (Jan. 1997) [**Required for subcontracts that require work on a government installation**]
- 52.232-39 Unenforceability of Unauthorized Obligations (if Subcontract references a Seller End User License Agreement)

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- 52.227-16 Additional Data Requirements (Jun. 1987) (*within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract*).
- 52.232-40 Providing Accelerated Payments to Small Business Concerns (if Seller is a small business and EOS receives accelerated payments under its contract)
- 52.237-2 Protection of Government Buildings, Equipment and Vegetation (if work is performed at a government facility)
- 52.237-3 Continuity of Services (if Subcontract includes services)
- 52.239-1 Privacy or Security Safeguards (if Subcontract involves design, development, or operation of a system of records)
- 52.243-1 Changes-Fixed-Price. [the value of any disputed adjustment will be determined by a good faith subcontractor claim submitted by EOS to the U.S. Government under the Disputes clause of EOS' prime contract with the U.S. Government]
- 52.244-3 Privacy Training (Jan. 2017) [Required for subcontracts that involve access to personally identifiable information or, under the Privacy Act, a system of records]
- 52.245-1 Government Property with Alternate I (if Subcontract involves access to Government property)
- 52.247-63 Preference for U.S. Flag Air Carriers (June 2003) [Applicable to subcontracts or purchase orders that may involve international air transportation]

### **SUBPART B – DFARS CLAUSES**

**If this contract is otherwise with or in support of a Department of Defense customer, the following Defense Federal Acquisition Regulation Supplement (“DFARS”) clauses are incorporated by reference in addition to the FAR clauses in Subpart A:**

#### **Applicable to All Subcontracts**

- 252.204-7000 Disclosure of Information (Oct. 2016) (Subcontractor shall not release to anyone outside the Contractor'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 approved by the Contracting Officer thru the Prime Contractor).
- 252.203-7002 Requirement to Inform Employees of Whistleblower Rights
- 252.204-7004 Antiterrorism Awareness Training for Contractors (if Subcontract performance requires routine physical access to Federally controlled facility or military installation)
- 252.204-7009 Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (JAN 2023) [Required for subcontracts for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial items, without alteration, except to identify the parties.]
- 252.204-7014 Limitations on the Use or Disclosure of Information by Litigation Support Contractors (if Subcontract involves litigation support services)
- 252.204-7015 Disclosure of Information to Litigation Support Contractors
- 252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country
- 252.223-7008 Prohibition of Hexavalent Chromium
- 252.225-7048 Export Controlled Items (Contractor/ Subcontractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor/Subcontractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR. The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts).
- 252.204-7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
- 252.225-7056 Prohibition Regarding Business Operations with the Maduro Regime
- 252.225-7060 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region
- 252.227-7013 Rights in Technical Data—Other Than Commercial Products and Commercial Services. **(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 Contractor**

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**that the data have been destroyed.** (iii) The **Contractor, 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 Contractor 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 Contractor has granted 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.

- 252.227-7016 Rights in Bid or Proposal Information. (The Contractor 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. Except as provided in paragraph (d) of this clause, the Government 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.** 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 Contractor's bid or proposal **within the Government. The Government shall not** release, perform, display, or disclose such information outside the Government without the Contractor's written permission.
- 252.227-7019 Validation of Asserted Restrictions -- Computer Software (Sept. 2016) (This clause ensures that the contractor (and its subcontractors or suppliers) maintains records to justify any markings that assert restrictions on the government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered under the contract. Justification: The contractor must be prepared to provide a written justification for any restrictive markings in response to a request for information or a challenge from the contracting officer).
- 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (May 2013)
- 252.227-7026 Deferred Delivery of Technical Data or Computer Software (Apr. 1988)
- 252.227-7027 Deferred Ordering of Technical Data or Computer Software (Apr. 1988)
- 252.227-7037 Validation of Restrictive Markings on Technical Data (Sept. 2016)
- 252.227-7038 Patent Rights -- Ownership by the Contractor (Large Business) (June 2012) [Required for subcontracts for experimental, developmental or research work unless a different patent rights clause is required by FAR 27.303; if the subcontractor is a small business concern or nonprofit organization, insert FAR 52.227-11 instead]
- 252.227-7039 Patents -- Reporting of Subject Inventions (Apr. 1990)
- 252.249-7002 Notification of Anticipated Contract Termination or Reduction (June 2020) (When subcontracts have been issued, the prime contractor is responsible for-- (1) Providing notice of the termination or substantial reduction in funding to all first-tier subcontractors with a subcontract valued equal to or greater than \$700,000; and (2) Requiring that each subcontractor-- (i) Provide such notice to each of its subcontractors for subcontracts valued greater than \$150,000; and (ii) Impose a similar notice and flowdown requirement in subcontracts valued greater than \$150,000 at all tiers.

### **Applicable to Subcontracts Over \$50,000**

- 252.225-7981 Additional Access to Contractor and Subcontractor Records (Other Than USCENTCOM) (DEVIATION 2015-00016) (Sept. 2015) [Required for subcontracts with a value over \$50,000 that will be performed outside the United States and its outlying areas]
- 252.225-7993 Prohibition on Providing Funds to the Enemy (DEVIATION 2020-00022) (Aug. 2020) [Required for subcontracts in excess of \$50,000 that will be performed outside the United States and its outlying areas]

### **Applicable to Subcontracts Over \$100,000**

- 252.225-7994 Additional Access to Contractor and Subcontractor records in the United States Central Command Theater of Operations (DEVIATION 2015-00013) (Mar. 2015) [Required for subcontracts over \$100,000]

### **Applicable to Subcontracts Over \$150,000**

- 252.225-7061 Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations

### **Applicable to Subcontracts Over \$250,000**

- 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Dec. 2008) [Required for subcontracts in excess of \$250,000]
- 252.247-7023 Transportation of Supplies by Sea (Feb. 2019) [For contracts in excess of \$250,000 insert the entire clause; for subcontracts at or below \$250,000 insert paragraphs (a)-(e) and (i)]

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### **Applicable to Subcontracts Over \$500,000**

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Apr. 2019) [Required for subcontracts exceeding \$500,000]

### **Applicable to Subcontracts Over \$750,000**

252.219-7003 – Small Business Subcontracting Plan (DoD Contracts) (DEC 2019) Required for contracts that include FAR 52.219-9, Small Business Subcontracting Plan (> \$1.5M for construction). See FAR 19.708(b)(1). (Does not apply to Small Businesses)

252.219-7004 – Small Business Subcontracting Plan (Test Program) (DEC 2022) Required for contracts that include FAR 52.219-8, Utilization of Small Business Concerns (> \$1.5M for construction). See FAR 19.708(b)(1). (Does not apply to Small Businesses)

### **Applicable to Subcontracts Over \$1,000,000**

252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements (Dec. 2010) [Required for subcontracts in excess of \$1 million]

### **Applicable to Subcontracts Over \$6,000,000**

252.203-7003 Agency Office of the Inspector General

252.203-7004 Display of Hotline Posters (Aug. 2019) [Required for subcontracts in excess of \$6 million]

### **Applicable to Subcontracts Over \$50,000,000**

252.234-7004 – Cost and Software Data Reporting System (JUNE 2015) “Contractor shall require CSDR reporting from subcontractors at any tier with a subcontract that exceeds \$50 million.”

### **Applicable Only to the Extent Indicated**

252.204-7009 Limitation on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information (if Subcontract involves support for safeguarding covered defense information or cyber incident reporting)

252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (Dec. 2019) [Required for subcontracts for operationally critical support, or for which subcontract performance will involve covered defense information. - Applicable to all DOD contracts except for contracts solely for the acquisition of COTS items]

252.211-7003 Item Unique Identification and Valuation. (Parts and sub-assemblies identification and serial numbers. Includes COTs items. If the Contractor acquires by subcontract any item(s) for which item unique identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial products or commercial services. All reports required to be submitted under this clause shall be submitted to EOS at a location to be provided; delete paragraph (g) and insert the following in lieu thereof: "(g) Lower-Tier Subcontracts. Seller shall include this clause, including this paragraph (g), in all lower tier subcontracts issued under this Subcontract for the acquisition of components identified herein as requiring UID).

252.211-7007 Reporting of Government-Furnished Property (if Subcontract involves access to Government property; Subcontractor to report through EOS)

252.223-7001 Hazard Warning Labels (if Subcontract requires delivery of hazardous materials)

252.223-7002 Safety Precautions for Ammunition and Explosives (if Subcontract involves ammunition, explosives, or propellants)

252.223-7003 Change in Place of Performance – Ammunition and Explosives (if Subcontract involves ammunition, explosives, or propellants)

252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (if Subcontract involves arms, ammunition, or explosives)

252.225-7007 Prohibition on Acquisition of U.S. Munitions List Items from Communist Chinese Military Companies (if Seller is supplying items on the U.S. Munitions List)

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (if work contains specialty metals)

252.225-7010 Commercial Derivative Military Article – Specialty Metal Compliance Certificate (if work contains specialty metals)

252.225-7011 Restrictions on Acquisition of Supercomputers (if Subcontract involves delivery of supercomputers)

252.225-7013 Duty-Free Entry – Basic (Apr. 2020) [Required for subcontracts for qualifying country components or nonqualifying country components for which the duty will likely exceed \$200 per unit]

252.225-7015 Restrictions on Acquisition of Hand or Measuring Tools (if Subcontract includes hand or measuring tools)

252.225-7017 Photovoltaic Devices (if Subcontract provides for delivery of photovoltaic devices)

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- 252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain (if Subcontract is for items containing welded shipboard anchor or mooring chain four inches or less in diameter)
- 252.225-7025 Restriction on Acquisition of Forgings (if Subcontract is for forging items or items that contain forging items)
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (if Subcontract involves purchase of supplies for international military training or Foreign Military Sales)
- 252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (if Subcontract involves acquisition of carbon, alloy, or armor steel plate)
- 252.225-7038 Restriction on Acquisition of Air Circuit Breakers (if Subcontract includes air circuit breakers for naval vessels)
- 252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the U.S. (if supporting Armed Forces deployed outside the U.S. Required for subcontracts where subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States in (i) contingency operations; (ii) peace operations consistent with Joint Publication 3-07.3; or (iii) other military operations or military exercises when designated by the Combatant Commander or as directed by the Secretary of Defense)
- 252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States. (Applicable when Contractor and its subcontractors, if performing or traveling outside the United States under this contract Does not apply to a foreign government or representative or foreign corporation wholly owned by a foreign government.)
- 252.225-7052 Restriction on the Acquisition of Certain Magnets, Tantalum and Tungsten (if Subcontract is for items containing a covered material unless an exception applies in accordance with the clause)
- 252.225-7980 Contractor Personnel Performing in the United States Africa Command Area of Responsibility. (Clause that pertains to contractor personnel performing in the United States Africa Command (USAFRICOM) area of responsibility.
- 252.225-7987 Requirements for Contractor Personnel Performing in the U.S. Southern Command Area of Responsibility (DEVIATION 2012-00004) (Feb. 2021)
- 252.225-7995 Contractor Personnel Performing in the United States Central Command Area of Responsibility (DEVIATION 2017-00004) (Sept. 2017) [Required for subcontracts when subcontractor personnel are performing in the USCENTCOM area of responsibility]
- 252.225-7997 Contractor Demobilization (DEVIATION 2013-00017) (Aug. 2013) **Contractor Demobilization** clause that applies to contracts with performance in Afghanistan.
- 252.225-7999 Taxes - Foreign Contracts in Afghanistan (DEVIATION 2013-00016) (July 2013) (This clause is applicable when contracting for products or services from specific regions. It ensures that contractors comply with certain restrictions or requirements related to these regions. The DEVIATION 2020-00002 version of this clause specifies the conditions and obligations for contractors).
- 252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (if Subcontract involves manufacture, modification, overhaul, or repair of aircraft, missiles, space launch vehicles, or components)
- 252.232-7017 Accelerating Payments to Small Business Subcontractors – Prohibition on Fees and Consideration (if Seller is a small business and EOS receives accelerated payments under its contract)
- 252.235-7003 Frequency Authorization (if Subcontract requires developing, producing, constructing, testing, or operating a device requiring frequency authorization; Alternate I may apply at EOS's discretion)
- 252.237-7010 Prohibition on Interrogation of Detainees (applies to Subcontracts for services)
- 252.237-7019 Training for Contractor Personnel Interacting with Detainees (if Subcontract requires interaction with detainees)
- 252.237-7023 Continuation of Essential Contractor Services (Oct. 2010) [Required for subcontracts for essential services]
- 252.239-7000 Protection Against Compromising Emanations (if Subcontract involves information technology that requires protection against compromising emanations)
- 252.239-7001 Information Assurance Contractor Training and Certification (if Subcontract involves information assurance functions as described in DoD 8570.01-M)
- 252.239-7010 Cloud Computing Services (if Subcontract involves cloud services)
- 252.246-7003 Notification of Potential Safety Issues (if required by DFARS 252.246-7003(f))
- 252.246-7006 Warranty Tracking of Serialized Items.
- 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (Aug. 2016) [Required for subcontracts for electronic parts or assemblies containing electronic parts]
- 252.246-7008 Sources of Electronic Parts (if Seller is supplying electronic parts or assemblies containing electronic parts, unless the Seller is the original manufacturer)
- 252.247-7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (if Seller is a motor carrier, broker, or freight forwarder)



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### **Additional Clauses Included in Full Text**

The following additional clauses are included in the Agreement in full text, unless otherwise indicated below. Except with respect to FAR clauses incorporated by reference, the interpretive guidelines set forth at the beginning of this Section.

Full text of these clauses can be obtained from the following websites: <https://www.acquisition.gov/dfars>.

1. **EXCLUDED STATUS.** The Contractor represents that, as of the date of the effective date of the Agreement, neither the Contractor or its subcontractor(s), nor any of the Contractor's or its subcontractor's respective principals, are debarred, suspended, or proposed for debarment by the U.S. Government, are owned or controlled by the government of a country that is a state sponsor of terrorism, or are the subsidiary of an entity that is owned or controlled by the government of a country that is a state sponsor of terrorism. Reference FAR 52.209-6 Non Debarment. Protecting the Government's Interest When Subcontracting. The Contractor must confirm this representation on the effective date of the Agreement if the effective date of the Agreement occurs after the date on which the Contractor executes the Agreement. **This provision does not apply if the Agreement is valued at \$30,000 or less or is for commercially available off-the-shelf items.**
2. **REPORTING EXECUTIVE COMPENSATION AND AWARD.** The Contractor will provide EOS with any information necessary to satisfy EOS' obligations under FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards, including the information specified in FAR 52.204-10(d)(2) and, if applicable, the information set forth in FAR 52.204-10(d)(3). Any information provided pursuant to this provision will be publicly disclosed. **This provision only applies if the value of the Agreement is \$30,000 or more and the Contractor's gross income was \$300,000 or more in the tax year preceding the tax year in which the Agreement was awarded.**
3. **PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** The Contractor will provide EOS with any information necessary to satisfy EOS' obligations under FAR 52.204-25. This FAR is applicable to all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services that exceed \$10,000.00.
4. **Covered Telecommunications Equipment or Services-Representation.** The Contractor will provide EOS with any information necessary to satisfy EOS' obligations under FAR 52.204-26 Covered Telecommunications Equipment or Services-Representation. Not applicable to COTS items or services. 889 Certification is not required from any merchant who has an active SAM Registration with an updated FAR 52.204-26 (Oct 2020). **If not registered with updated FAR 52.204-26 (Oct 2020) the VENDOR MUST COMPLETE AND SIGN AND RETURN 889 CERTIFICATION FORM TO THE BUYER.**
5. **NON-DISCRIMINATION AND OTHER LABOR REQUIREMENTS.** The Contractor and EOS will, if applicable, abide by the requirements of 41 C.F.R. §§ 60-1.4, 60-1.7, 60-1.35(c), 60-300.5(a), 60-741.5(a), and 29 C.F.R. part 471, Appendix A to Subpart A, as updated from time to time. Among other requirements, these regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.
6. **PROVISION OF INFORMATION TO THE U.S. GOVERNMENT.** The Contractor acknowledges and agrees that information that the Contractor shares with EOS may be shared with the U.S. Government in connection with EOS' performance of a U.S. Government contract or subcontract. When appropriate, the Contractor may request that EOS provide specific information to the U.S. Government with restrictions on further disclosure of the information.
7. **U.S. GOVERNMENT REPORTING.** No confidentiality provision included in the Agreement may be construed to prohibit or otherwise restrict the Contractor, as a subcontractor of EOS, from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of the federal department or agency authorized to receive such information under the procurement.

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8. **Certification and Disclosure Regarding Payments to Influence** the Contractor will provide EOS with any information necessary to satisfy EOS' obligations under FAR 52.203-11 & 12 for **solicitations expected to exceed \$150,000 including COTs (Commercial Off-The-Shelf) items and services.**
9. **Safeguarding Covered Defense Information and Cyber Incident Reporting.** The Contractor will provide EOS with any information necessary to satisfy EOS' obligations under DFAR 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting. Include this clause, **in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial products or commercial services, without alteration,** except to identify the parties. Require subcontractors to—(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement. (ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause. **CUI categories can be found here <https://www.archives.gov/cui/registry/category-list>**
  - o DFARS 252.204 7012 requires defense contractors to protect Controlled Unclassified Information (CUI) by implementing NIST SP 800-171 security requirements, developing a System Security Plan (SSP), and reporting cyber incidents within 72 hours.
  - o Cloud service providers critical to defense contractors must meet stringent security standards including obtaining FedRAMP authorization and implementing additional DFARS 252.204 7012 specified security measures for CDI protection.
  - o Defense contractors must ensure subcontractor compliance with DFARS 252.204 7012 through flow-down requirements and are also responsible for CMMC certification which includes third-party assessment and overlaps with some DFARS requirements but introduces additional data protection controls. **(Not applicable to purchases below the micro purchase threshold of \$10,000.00).**
  - o DFARS 252.204 7012 is a regulatory requirement that applies to all acquisitions within the Department of Defense (DoD), **with the exception of Commercial Off the Shelf (COTS) items, non-COTS over the over the micro purchase threshold of \$10,000.00).** It mandates that contractors establish controls to safeguard sensitive information and report any cyber incidents. This regulation is critical for maintaining the security and integrity of defense information, particularly when it comes to the handling of Controlled Unclassified Information (CUI).
  - o DFARS 252.204 7012 primarily aims for contractors to implement the National Institute of Standards and Technology's (NIST) SP 800-171 security requirements, thereby effectively safeguarding sensitive unclassified information like Controlled Unclassified Information (CUI) and Covered Defense Information (CDI).
  - o DFARS 252.204 7012 - There's an exception for **micro-purchases.** According to FAR 13.201(d), neither the **Cybersecurity Maturity Model Certification (CMMC)** nor the **NIST SP 800-171 DoD Assessment requirements** are necessary for purchases at or below the micro-purchase threshold.
10. **SITE VISITS, AUDITS, AND INSPECTIONS.** EOS and the U.S. Government will have the right to conduct site visits, audits, and inspections at the Contractor's facilities relating to Contractor's performance of the Agreement with forty-eight hours advance notice or without notice with respect to time-sensitive or critical circumstances. If EOS or the U.S. Government identifies any issues during the visit, the Contractor will prepare a report describing the issues and identifying potential solutions. The Contractor will provide the report to EOS for review within five business days. Once corrective action is taken in consultation with EOS, the Contractor will provide EOS with a follow-up report within ten business days.
11. **EXECUTIVE ORDERS.** The Contractor acknowledges that U.S. executive orders and laws, including but not limited to Executive Order 13224 and Public Law 107-56, prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Contractor to ensure compliance with these executive orders and laws. This clause must be included in all subcontracts under this Agreement.
12. **U.S. GOVERNMENT DISPUTES.** Any dispute between Contractor and EOS arising from the U.S. Government's actions under EOS' agreement with the U.S. Government, and for which EOS has recourse against the U.S. Government, will be resolved as follows notwithstanding any other dispute provisions in this Agreement:
  - a. Contractor shall notify EOS of the dispute as soon as practicable, but in no event more than six months after Contractor knew or should have known of the facts giving rise to such a dispute. Contractor

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shall provide in the notice a written justification for, and evidence supporting its position in the dispute and certify that it has a good faith basis to take this position.

b. Upon receiving a timely and complete notice from Contractor, EOS will pursue relief under the Disputes clause in its agreement with the U.S. Government by submitting a sponsored claim to the U.S. Government contracting officer.

c. If Contractor deems the contracting officer's final decision in response to the sponsored claim to have an adverse effect on Contractor's position or rights, Contractor and EOS will jointly determine in good faith whether to appeal the contracting officer's final decision to the appropriate Board of Contract Appeals, the U.S. Court of Federal Claims, or any other forum that has jurisdiction over the contracting officer's final decision. If Contractor and EOS jointly agree to pursue such an appeal, Contractor will be responsible for pursuing the appeal through EOS' filings and will bear all expenses, including attorneys' fees, arising from the appeal. EOS will transfer any amounts that it receives in a dispute with the U.S. Government to Contractor to the extent that such amounts reflect recovery for any portion of a claim representing Contractor's damages. EOS' payment of such amounts will constitute complete satisfaction of any liability that EOS may have to Contractor under this Agreement in connection with such a claim. EOS will also have no liability to Contractor in connection with a claim brought under this Section to the extent that the U.S. Government issues a final decision denying such a claim after the decision is no longer appealable. In addition, EOS will have no liability to Contractor with respect to any dispute that Contractor fails to timely raise under this Section, except to the extent that EOS expressly agrees in writing to waive an applicable timeline.

13. **U.S. CITIZENSHIP.** The Contractor will only permit U.S. citizens to perform work under this Agreement except to the extent the U.S. Government has granted a waiver under EOS' prime agreement for a particular individual.