

# SPECIAL TERMS AND CONDITIONS OF PURCHASE – SUPPLEMENT 4

## FIXED-PRICE TYPE PROCUREMENTS FOR COMMERCIAL ITEMS

### UNDER U.S. GOVERNMENT PRIME CONTRACTS

The Federal Acquisition Regulation (FAR) clauses referenced below in effect as of the date of the applicable prime contract or higher-tier subcontract are incorporated herein by reference, with the same force and effect as if they were given in full text, including any notes following the clause citation. Except as noted herein, in the event of a conflict between any terms and/or set forth herein and Buyer's General Terms and Conditions of Purchase, the terms and conditions of these Special Terms and Conditions shall take precedence.

In all clauses listed herein, terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the U.S. Government and to enable Buyer to meet its obligations under its prime contract or subcontract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", the term "Subcontractor" shall mean "Seller's Subcontractor" under Buyer's Order, and the term "Contract" shall mean "Buyer's Order". The term "Commercial Item" has the meaning defined in FAR 2.101. The Contracts Disputes Act shall have no application to the Buyer's Order. Any reference to a "Disputes" clause shall mean the "Disputes and Arbitration" section of Buyer's General Terms and Conditions of Purchase. In no event shall the Seller acquire any direct claim or course of action against the U. S. Government. If any of the following FAR clauses do not apply pursuant to the associated FAR prescribing criteria, such clauses shall be considered to be self-deleting.

#### 1. FAR Clauses

In accordance with 52.252-2, the following clauses and provisions are incorporated by reference and apply as defined by the respective FAR clause or provision:

- (a) The following FAR clauses apply as defined by the respective FAR clause regardless of dollar value:
  - 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (applicable if prime contract is funded with Recovery Act funds)
  - 52.204-2 Security Requirements (applicable if access to classified information is required)
  - 52.204-9 Personal Identity Verification of Contractor Personnel (applicable if Seller is required to routinely access a federally-controlled facility or a Federal information system)
  - 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items
  - 52.222-21 Prohibition of Segregated Facilities
  - 52.222-26 Equal Opportunity
  - 52.222-41 Service Contract Labor Standards (applicable if Buyer's Order is subject to the Service Contract Labor Standards statute)
  - 52.222-50 Combating Trafficking in Persons
  - 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment
  - 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services
  - 52.222-55 Establishing a Minimum Wage for Contractors (applies if FAR 52.222-41 is applicable)
  - 52.223-11 Ozone Depleting Substances
  - 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving
  - 52.225-13 Restrictions on Certain Foreign Purchases
  - 52.232-40 Providing Accelerated Payments to Small Business Subcontractors
  - 52.244-6 Subcontracts for Commercial Items
  - 52.245-1 Government Property (applicable if Government furnished property will be used in performance of Buyer's Order)
  - 52.247-63 Preference for U.S. Flag Air Carriers
  - 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels
- (b) The following additional clauses apply as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds the "micro-purchase threshold" (\$3,000):
  - 52.222-54 Employment Eligibility Verification
- (c) The following additional clause applies as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds \$15,000:
  - 52.222-36 Equal Opportunity for Workers with Disabilities
- (d) The following additional clause applies as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds \$25,000:
  - 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (applicable if Buyer is the Prime Contractor)
  - 52.225-1 Buy American-Supplies
- (e) The following additional clause applies as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds \$30,000:
  - 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
- (f) The following additional clauses apply as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds \$100,000:
  - 52.222-35 Equal Opportunity for Veterans
  - 52.222-37 Employment Reports on Veterans
- (g) The following additional clauses apply as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds the "simplified acquisition threshold" (\$150,000):
  - 52.203-3 Gratuities
  - 52.203-12 Limitation on Payments to Influence Certain Federal Transactions
  - 52.203-16 Preventing Personal Conflicts of Interest (applicable if performing acquisition functions closely associated with inherently governmental functions)
  - 52.211-15 Defense Priority and Allocation Requirements (applicable if Buyer's Order has a DPAS rating)
  - 52.219-8 Utilization of Small Business Concerns
  - 52.222-40 Notification of Employee Rights Under the National Labor Relations Act
- (h) The following additional clauses apply as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds \$700,000:
  - 52.215-20 Requirements for Cost or Pricing Data or Information Other than Cost or Pricing
  - 52.215-21 Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data-Modifications
- (i) The following additional clause applies as defined by the respective FAR clause if the value of Buyer's Order equals or exceeds \$5,000,000:
  - 52.203-13 Contractor Code of Business Ethics and Conduct

#### 2. DFARS Clauses

The following DFARS clauses and provisions are incorporated by reference and apply as defined by the respective DFARS clause or provision:

- (a) The following DFARS clauses apply as defined by the respective DFARS clause regardless of dollar value:
  - 252.203-7002 Requirement to Inform Employees of Whistleblower Rights
  - 252.204-7000 Disclosure of Information (applicable if Seller will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public)
  - 252.204-7012 Safeguarding of Covered Defense Information and Cyber Incident Reporting
  - 252.204-7015 Disclosure of Information to Litigation Support Contractors
  - 252.208-7000 Intent to Furnish Precious Metals as Government-Furnished Material (applicable if the item(s) delivered by Seller contain precious metals)
  - 252.211-7003 Item Identification and Valuation (Seller's obligations under this clause are limited to cooperating with Buyer's efforts to comply with this clause)
  - 252.211-7007 Reporting of Government-Furnished Property (applicable if Seller will use Government-Furnished Property in the performance of Buyer's Order)
  - 252.223-7001 Hazard Warning Labels (applicable if submission of hazardous material data sheets is required under Buyer's Order)
  - 252.223-7002 Safety Precautions for Ammunition and Explosives (applies if ammunition or explosives are furnished, including liquid and solid propellants)
  - 252.223-7003 Change in Place of Performance – Ammunition and Explosives (applies if DFARS 252.223.7003 is applicable)
  - 252.223-7007 SafeGuarding Sensitive Conventional Arms, Ammunition and Explosives
  - 252.223-7008 Prohibition of Hexavalent Chromium
  - 252.225-7001 Buy American and Balance of Payments Program (applies in lieu of FAR 52.225-1)
  - 252.225-7007 Prohibition on Acquisition of United States Munitions List Items From Communist Chinese Military Companies

- 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (applicable if work contains specialty metals)
- 252.225-7010 Commercial Derivative Military Article – Specialty Metals Compliance Certificate (applicable if work contains specialty metals)
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings
- 252.225-7021 Trade Agreements (applies in lieu of FAR 52.225-5)
- 252.225-7025 Restriction on the Acquisition of Forgings
- 252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate
- 252.225-7031 Secondary Arab Boycott on Israel
- 252.225-7033 Waiver of United Kingdom Levies (applicable if Buyer's Order is placed with a United Kingdom company)
- 252.225-7043 Anti-Terrorism/Force Protection for Defense Contractors Outside the United States (Applicable if work is to be performed outside of the United States)
- 252.225-7048 Export-Controlled Items
- 252.227-7013 Rights in Technical Data-Noncommercial Items (applicable if Seller will be providing technical data for commercial items developed in part at Government expense)
- 252.227-7015 Technical Data – Commercial Items (applicable if Seller will be providing technical data related to commercial items developed in part at private expense)
- 252.227-7019 Validation of Asserted Restrictions-Computer Software (applicable if Seller will be furnishing of computer software in the performance of Buyer's Order)
- 252.227-7037 Validation of Restrictive Markings on Technical Data
- 252.231-7000 Supplemental Cost Principles
- 252.235-7003 Frequency Authorization (applicable if Buyer's Order is a device requiring frequency authorization)
- 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services (applicable if Buyer's Order is for telecommunications equipment)
- 252.239-7017 Notice of Supply Chain Risk
- 252.239-7018 Supply Chain Risk
- 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts)
- 252.246-7001 Warranty of Data (applicable if DFARS clause 252.227-7013 applies)
- 252.246-7003 Notification of Potential Safety Issues (applicable if Buyer's Order is for (i) parts defined as critical safety items in accordance with this clause; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; and (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)
- 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System
- 252.247-7023 Transportation of Supplies by Sea
- 252.247-7024 Notification of Transportation of Supplies by Sea
- (b) The following additional clauses apply as defined by the respective DFARS clause if the value of Buyer's Order equals or exceeds the "simplified acquisition threshold" (\$150,000):
  - 252.225-7012 Preference for Certain Domestic Commodities
  - 252.249-7002 Notification of Anticipated Contract or Reduction
- (c) The following additional clause applies as defined by the respective DFARS clause if the value of Buyer's Order equals or exceeds \$500,000:
  - 252.226-7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns
- (d) The following additional clauses apply as defined by the respective DFARS clause if the value of Buyer's Order equals or exceeds \$5,000,000:
  - 252.203-7003 Agency Office of the Inspector General

**3. Additional Requirements**

- (a) Seller covenants and agrees that if Buyer's contract price or a cost allowance is reduced by reason of Seller's failure to comply with an applicable Cost Accounting Standard or to follow any practice disclosed in its Disclosure Statement, Buyer shall be entitled to:
  - (i) reduce the price of Buyer's Order by an amount commensurate with the reduction in Buyer's contract price or cost allowance together with interest computed at the applicable Treasury rate; or
  - (ii) in the event Seller shall already have been paid the full Order price or essentially the full Order price, Seller shall reimburse and indemnify Buyer in an amount commensurate with the reduction in Buyer's contract price or cost allowance together with interest computed at the applicable Treasury rate.
- (b) The provisions of 41 CFR 60-300.5, Equal Opportunity for Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans, apply to all contracts, subcontracts, and purchase orders where the value equals or exceeds \$100,000. Contractor and subcontractor 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.
- (c) The provisions of 41 CFR 60-741.5, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities, apply to all contracts, subcontracts, and purchase orders where the value equals or exceeds \$10,000. Seller shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment-qualified individuals with disabilities.
- (d) Notwithstanding any other clauses in the Buyer's Order, Seller shall not impose any restrictions on the Government's use of tooling, designs, and/or drawings provided or received during the performance of Buyer's Order that the Government independently owns or has a right to use.
- (e) Seller shall flow down all required FAR and DFARS clauses to Seller's subcontractors, suppliers and vendors in accordance with the applicable FAR and DFARS requirements.

**4. Government Inspection**

The Government has the right to perform Government quality assurance at Seller's plant as may be necessary to determine conformance with the requirements specified for all services and/or supplies ordered under Buyer's Order.

**5. Government Owned Facilities**

If Government-owned facilities are to be used by Seller to perform work prescribed herein, two prices are to be submitted; one based on rent-free use and one based on rental payments (applicable to request for quote only).

**6. Order Completion and Closeout**

Final invoice must be submitted no later than 45 days following final delivery. Failure to submit the invoice within the specified period will result in a unilateral closeout of the order by the Buyer at the price shown as paid in the Buyer's records.

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