

FAR and AGAR Clauses

Clauses Incorporated by Reference:

- 52.204-13 System for Award Management Maintenance (OCT 2018)
- 52.204-18 Commercial and Government Entity Code Maintenance (AUG 2020)
- 52.212-4 Contract Terms and Conditions--Commercial Products and Commercial Services (DEC 2022)
- 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984)

Clauses Incorporated by Full Text:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JUN 2023)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

- (1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).
- (3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).
- (5) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3909 and 10 U.S.C. 3801).
- (6) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).
- (7) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

- ☒ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

- ☒ (8) 52.204.27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).
 - ☒ (9) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Nov 2021) (31 U.S.C. 6101 note).
 - ☒ (15) (i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2020) (15 U.S.C. 644).
 - ☒ (23) (i) 52.219-28, Post Award Small Business Program Rerepresentation (OCT 2022) (15 U.S.C. 632(a)(2)).
 - ☒ (27) 52.219-33, Nonmanufacturer Rule (SEP 2021) (15U.S.C. 637(a)(17)).
 - ☒ (28) 52.222-3, Convict Labor (JUN 2003) (E.O.11755).
 - ☒ (29) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (DEC 2022) (E.O.13126).
 - ☒ (30) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
 - ☒ (31) (i) 52.222-26, Equal Opportunity (SEP 2016) (E.O.11246).
 - ☒ (36) (i) 52.222-50, Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O. 13627).
 - ☒ (45) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).
 - ☒ (49) (i) 52.225-1, Buy American-Supplies (OCT 2022) (41 U.S.C. chapter 83).
 - ☒ (52) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
 - ☒ (59) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (OCT2018) (31 U.S.C. 3332).
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services: Not Applicable.
- (d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation: Not Applicable.

(e) (1) 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 products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).
- (ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).
- (iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).
- (iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).
- (v) 52.204-27, Prohibition on a ByteDance Covered Application (JUN 2023) (Section 102 of Division R of Pub. L. 117-328).
- (vi) 52.219-8, Utilization of Small Business Concerns (OCT 2022) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (vii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- (viii) 52.222-26, Equal Opportunity (SEP 2015) (E.O. 11246).
- (ix) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).
- (x) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).
- (xi) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).
- (xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xiii) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).
- (xiv) (A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

(xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) (41 U.S.C. chapter 67).

(xvii) 52.222-54, Employment Eligibility Verification (MAY 2022) (E.O. 12989).

(xviii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

(xx) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (JAN 2017) of 52.224-3.

(xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

(xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (MAR 2023) (31 U.S.C. 3909 and 10 U.S.C. 3801). Flown down required in accordance with paragraph (c) of 52.232-40.

(xxiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

52.252-2 Clauses Incorporated by Reference (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulation (FAR): <https://www.acquisition.gov/browse/index/far> (FAR Clauses are located in FAR Part 52 at <https://www.acquisition.gov/far/part-52>)

Department of Agriculture Acquisition Regulation (AGAR): <https://www.acquisition.gov/agar> (AGAR Clauses are located in AGAR Part 452 at <https://www.acquisition.gov/agar/part-452-solicitation-provisions-and-contract-clauses>)

Deviations to clauses may be viewed at:
<https://www.dm.usda.gov/procurement/policy/FARClassDeviations.htm>

(End of Clause)

52.252-6 Authorized Deviations in Clauses (NOV 2020)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Agriculture Acquisition Regulation (48 CFR Chapter 4) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of Clause)

Modification for Contract Closeout

Upon contract closeout for contracts utilizing Simplified Acquisition Procedures (SAP) according to FAR 13:

- (a) If unobligated funds in the amount of \$1,000 or less remain on the contract, the Contracting Officer (CO) shall issue a unilateral modification for deobligation. The contractor will receive a copy of the modification but will not be required to provide a signature. The CO shall immediately proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.
- (b) If unobligated funds of more than \$1,000 remain on the contract, the CO shall issue a bilateral modification for deobligation. The contractor will receive a copy of the modification and will be required to provide a signature. (The CO may also request a Release of Claims be completed by the contractor, although not required for contract and orders using SAP procedures.) If the bilateral modification and Release of Claims are not returned to the CO within 60 days, the CO shall release the modification as unilateral and proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(End of Instruction)