

**GENERAL ATOMICS ELECTRONIC SYSTEMS, INC.**

**TERMS AND CONDITIONS FOR ORDERS ISSUED UNDER  
U.S. GOVERNMENT CONTRACTS**

**TABLE OF CONTENTS**

**A. General Provisions**

- A-1 Definitions
- A-2 Entirety of Agreement
- A-3 Publicity
- A-4 Delivery
- A-5 Packing, Marking and Shipping
- A-6 Order of Precedence
- A-7 Waiver
- A-8 Technical Direction and Contractor Responsibilities
- A-9 Patent Infringement Indemnity
- A-10 Buyer Furnished Property
- A-11 Payments
- A-12 Assignments and Subcontracts
- A-13 Indemnification for Defective Pricing, Noncompliance with Cost Accounting Standards, and Violation of the Anti-Kickback Statute and the Procurement Integrity Act
- A-14 Disputes / Arbitration
- A-15 Precautions, Indemnity, and Insurance
- A-16 Choice of Law

**B. FAR, DFAR and DEAR Provisions**

- B-1 Provisions Applicable to Commercial Items or Components
- B-2 Provisions Applicable to all Noncommercial Orders
- B-3 Provisions Applicable to Noncommercial Fixed Price Orders
- B-4 Provisions Applicable to Noncommercial Cost Reimbursement Orders
- B-5 Provisions Applicable to Noncommercial Time & Material or Labor Hour Orders

**A. GENERAL PROVISIONS**

**A-1 Definitions**

The following definitions apply unless otherwise specifically stated:

- (1) "Buyer", "General Atomics Electronic Systems, Inc.", or "GA-ESI" - the legal entity issuing this Order.
- (2) "Purchasing" or "Procurement Representative" - Buyer's authorized representative.
- (3) "Seller" or "Contractor" - the legal entity which contracts with the Buyer.
- (4) "This Order" or "this Contract" - this contractual instrument, including changes.
- (5) "Government" - the Government of the United States.
- (6) "Prime Contract" - the Government contract under which this Order is issued.
- (7) "FAR" - the Federal Acquisition Regulation
- (8) "DFAR" - the Department of Defense FAR Supplement
- (9) "DEAR" - the Department of Energy FAR Supplement
- (10) "Contracting Officer" - the Government Contracting Officer(s) for the Prime Contract.

**A-2 Entirety of Agreement**

The provisions of the Order constitute the complete and exclusive agreement between the parties hereto and supersede all previous negotiations, discussions, communications, representations, or agreements, whether written or oral, between the parties hereto. The Representations and Certifications as completed by the Seller are hereby incorporated in their entirety by reference. No agreement or understanding varying or extending the terms or conditions of this Order will be binding unless in writing, signed by the duly authorized representatives of both parties. Acceptance of this Order by the Seller will be by any one of the following: (1) acknowledgment in writing, (2) commencement of performance by the Seller or (3) delivery in whole or part of the items or services called for hereunder. No condition stated by the Seller in its acknowledgment of this Order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein, unless expressly accepted in writing by an authorized Purchasing Representative of the Buyer.

**A-3 Publicity**

Except as required by law, regulation or court order, no news release, public announcement, or advertising material concerned with this Order shall be issued or made by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

**A-4 Delivery**

- (1) TIME IS OF THE ESSENCE AND, EXCEPT AS HEREIN OTHERWISE SPECIFIED, DELIVERY SHALL BE STRICTLY IN ACCORDANCE WITH THE DELIVERY SCHEDULE SET OUT OR REFERRED TO IN THIS ORDER. If Seller's deliveries fail to meet said schedule with the result that Buyer elects to call upon Seller for express shipments, Seller shall be charged the difference between the freight and express rates. Items shipped to Buyer in advance of schedule without written approval of Buyer may be returned to Seller at Seller's risk and expense.
- (2) Title to items covered by this Order shall pass from Seller to Buyer at the f.o.b. point specified herein. Passing of title upon such delivery shall not constitute acceptance of the items by Buyer.

**A-5 Packing, Marking and Shipping**

Seller shall pack, mark and ship all goods and

supplies in accordance with the requirements of this Order and so as to be in compliance with all applicable transportation regulations and good commercial practice for protection against damage from weather and shipment, including any applicable Federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of hazardous materials. Seller shall secure the most advantageous transportation services and rates consistent therewith. No separate or additional charge is payable by Buyer for containers, crating, boxing, handling, dunnage, drayage or storage unless specifically stated in this Order or otherwise agreed to by Buyer in writing. Seller shall mark each container with the number of this Order and shall enclose a packing slip with this Order number in an envelope attached to each container. Damage resulting from improper packing or shipping will be charged to Seller.

**A-6 Order of Precedence**

In the event of any inconsistency or conflict between or among the provisions of this Order, such inconsistency or conflict shall be resolved by the following descending order of preference:

- 1. typed provisions set forth in this Order;
- 2. the statement of work;
- 3. the preprinted portion of this Order;
- 4. other incorporated or referenced documents; and
- 5. specifications attached hereto or incorporated by reference.

Buyer's specifications shall prevail over those of the United States Government, and both of the foregoing shall prevail over specifications of Seller.

**A-7 Waiver**

Failure of Buyer to enforce at any time any of the provisions of this Order, or any rights in respect thereto, or to exercise any election therein provided, shall in no way be considered to be a waiver of the right to thereafter enforce such provisions or rights or exercise any subsequent elections.

**A-8 Technical Direction and Contractor Responsibilities**

All communication between Seller and Buyer affecting the Statement of Work or Description of Supplies or Services to be furnished shall be through the Buyer's Purchasing Representative.

- (1) Buyer's technical personnel may, from time to time, provide written or oral technical direction. Technical Direction is defined as a directive to

the Seller within the requirements of the scope of work of the Order which approves approaches, solutions, designs, or refinements; fills in detail or otherwise completes the general description of work; shifts emphasis among work areas or tasks; or otherwise furnishes guidance to the Seller. Technical direction and management surveillance shall not impose tasks and requirements upon the Seller, additional to or different from, the general tasks and requirements stated in the Order. Technical direction shall not commit Buyer to any adjustment of the estimated cost or other contract provisions.

- (2) In the event any technical direction is interpreted by the Seller to fall within the clause entitled "Changes", the Seller shall not implement such direction, but shall notify Buyer's Purchasing Representative in writing of such interpretation within ten (10) working days after the Seller receives such direction. Such notice shall (1) include the reason upon which the Seller bases its belief the technical direction falls within the purview of the "Changes" clause; and (2) include the Seller's best estimate of the cost and schedule impact that would result from implementing the technical direction.
- (3) Buyer approval of documents.

#### **A-9 Patent Infringement Indemnity**

- (1) Seller shall defend Buyer, Buyer's customers, and any subsequent owners, sellers, users or operators of the items delivered under this Order against all claims and in all proceedings alleging infringement of any United States or foreign patent or copyright in the manufacture or sale of any item delivered under this Order, and Seller shall hold said parties harmless from any resulting liabilities and losses, provided Seller is reasonably notified in writing of such claims and proceedings, and further provided that said parties give Seller authority, information and assistance at Seller's expenses for the defense of same. Seller's obligation shall not apply to items manufactured pursuant to designs developed and furnished by Buyer or to any alleged infringement arising from the use or sale of items delivered under this Order in combination with items not delivered by Seller if such alleged infringement would not have occurred from the use or sale of such items solely for the purpose for which they were designed or sold to Buyer.

- (2) When this Order is performed under the authorization and consent of the United States Government to infringe United States patents (see FAR 52.227-1 referenced at Section B), Seller's liability for infringement of such patents pursuant to such performance shall be limited to the extent of the obligation of Buyer to indemnify or hold harmless the United States Government.

#### **A-10 Buyer-Furnished Property**

Buyer shall retain title to all property furnished to and utilized by Seller in the performance of this Order, including, but not limited to, dies, molds, jigs, tools, and materials. Seller shall label, maintain, and dispose of Buyer's property, including scrap, according to Buyer's written direction, and Seller shall be responsible for all loss or damage to Buyer's property in Seller's possession. If Seller does not receive timely written direction from Buyer concerning the maintenance and disposal of Buyer's property, including scrap, then Buyer shall be liable to Seller for the reasonable expense of maintaining, storing or disposing of such property. This clause does not govern Seller's handling, use, maintenance or disposal of Government-furnished property that may come into Seller's possession during Seller's performance of this Order; such handling, use, maintenance or disposal is governed by the government-furnished property clause referenced in Section B of this Order.

#### **A-11 Payment**

Payment date and cash discount period shall be calculated from the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the goods and supporting documentation at destination, whichever last occurs.

If this is a cost reimbursement type of order or if this Order specifies fixed hourly rates for services, a statement of accounts or invoice shall be sent to Buyer's Accounts Payable Department monthly. Invoices tendered for payment shall show the weekly rate of expenditure by labor classification as well as other costs allowable hereunder. Delays in receiving a statement or invoice will be considered just cause for deferring payment without losing discount privilege.

#### **A-12 Assignments and Subcontracts**

This Order is not assignable and shall not be assigned by Seller without the prior written consent of Buyer. Further, Seller agrees to obtain Buyer's approval before subcontracting this Order or any substantial portion thereof; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or material.

**A-13 Indemnification for Defective Pricing, Noncompliance with Cost Accounting Standards, and Violation of the Anti-Kickback Statute and the Procurement Integrity Act**

Seller, its subcontractors, agents, and/or employees agree to indemnify and save harmless and defend Buyer from and against any and all fines, penalties, offsets, claims, demands, actions, debts, liabilities, judgments, costs and attorney's fees, costs and profit disallowed or reduced by Buyer's customer arising out of claims on account of, or in any manner predicated upon (1) submission by Seller, its subcontractors, agents, and/or employees of alleged or confirmed defective pricing data, or (2) cost submitted by Seller which are deemed unallowable costs under FAR/DFAR, either by Buyer or applicable governmental agency, or (3) violation or noncompliance with any clause in FAR/DFAR entitled "Cost Accounting Standards," or the rules or regulations pursuant thereto, or (4) violation of the Anti-Kickback Act of 1986 (41 U.S.C. Section 51-58) by Seller or any of its subcontractors, agents, and/or employees, or (5) violation of the Procurement Integrity Act (41 U.S.C. 423 Section 27), or ( 6) any other government or contractual requirement for cost or pricing data submitted by the Seller, its subcontractors, agents, and/or employees to Buyer or any other relevant party to this Order.

**A-14 Disputes/Arbitration**

In the event of any dispute, claim, question, or disagreement arising from or relating to this Order or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then, upon notice to either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, of all its costs and fees. "Cost and Fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying, and telephone, court costs, witness fees, and attorneys' fees. Pending the outcome of the arbitration, the Seller shall proceed diligently with performance of the Order.

**A-15 Precautions, Indemnity, and Insurance**

Seller will defend at Seller's expense any suit or action, criminal or civil, arising out of Seller's performance.

If order is for work to be performed on Buyer's premises, Seller will procure and carry:

- (1) automobile liability insurance protecting the Seller from automobile bodily injury, property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage; and
- (2) a broad form general liability insurance policy which includes property damage, product and professional liability coverage with contractual liability endorsement with limits no lower than \$1,000,000. Such policy shall be on an Occurrence Form; and
- (3) such insurance of employees as may be required by any Workers' Compensation act or other law, regulation or ordinance which may apply in the circumstances and shall, at Buyer's request, furnish certificates of such insurance to Buyer.

For (1) and (2) above, such policies shall name Buyer as an additional insured.

If Seller's work under this Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause.

**A-16 Choice of Law**

This order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

**B. FAR, DFAR AND DEAR PROVISIONS**

The following clauses in Section 52 of the Federal Acquisition Regulation (FAR), Section 252 of the Department of Defense supplement to the FAR (DFAR), and Section 952 of the Department of Energy supplement to the FAR (DEAR) are each incorporated herein by this reference and made a part of this Order. To the extent that an earlier version of any such clauses are included in the prime contract or subcontract under which this Order is issued, the date of the clause as it appears in such prime contract or subcontract shall be controlling and said change shall be incorporated herein. In all such clauses, the term "Contractor" or "prime contractor" shall mean "Seller", the term "Contract" or "Schedule" shall mean this "Order", and the term "Government Contracting Officer", or equivalent phrases, shall mean "Buyer" as applicable; except that in those clauses relating to Patent and Data Rights, the term "Government" or "Contracting Officer" shall retain its literal meaning and is not to be construed as "Buyer." It is intended that the clauses in FAR, DFAR and DEAR as listed herein shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer, to ensure Seller's obligations to Buyer and to the United States Government, and to enable Buyer to meet its obligations under its prime contract or subcontract. Seller agrees to flow-down, as required, all applicable FAR, DFAR and DEAR clauses to its lower-tier subcontractors. Seller further agrees that all notifications and other communications required by these clauses shall be made through the Buyer's Purchasing Representative, unless this Order specifically provides otherwise.

**B-1 Provisions Applicable to Commercial Items or Components**

If this Order is for the furnishing of commercial items or commercial components in accordance with FAR 2.101, the FAR, DFAR and DEAR clauses in Section B-2 shall not apply. The terms and conditions of Section A above and (1) FAR 52.222-26, "Equal Opportunity," (2) FAR 52.222.35, "Affirmative Action for Special Disabled and Vietnam Era Veterans", (3) FAR 52.222-36, "Affirmative Action for Workers with Disabilities" and, (4) DFAR 252.227-7015, "Technical Data-Commercial Items", are applicable to this Order. The Seller also agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

**B-2 PROVISIONS APPLICABLE TO ALL NONCOMMERCIAL ORDERS**

The following clauses of the FAR, DFAR and DEAR are specifically incorporated herein by reference.

<b><u>FAR REFERENCE</u></b>	<b><u>CLAUSE</u></b>
52.203-3	<b>GRATUITIES</b> - Applicable if this Order is for an amount equal to or greater than the simplified acquisition threshold of \$100,000.
52.203-6	<b>RESTRICTIONS ON SUBCONTRACT SALES TO GOVERNMENT</b> - This clause applies if this Order exceeds \$100,000.
52.203-7	<b>ANTI-KICKBACK PROCEDURES</b> - This clause applies if this Order exceeds \$100,000, except that paragraph (c)(1) is not included in this Order. Paragraph (c) (4) is revised by deleting "The Contracting Officer may" and inserting "To the extent the Contracting Officer has effected an offset at the prime contract level or has directed Buyer to withhold any sum from the Seller, Buyer may . . . ."
52.203-12	<b>LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS</b> -This clause applies if this Order is in excess of \$100,000.
52.211-5	<b>MATERIAL REQUIREMENTS</b>
52.211-15	<b>DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS</b> This clause applies if this Order is a rated Order (The rating designation will appear on the face of the Order).

- 52.215-2           **AUDIT AND RECORDS - NEGOTIATION** This clause applies if this Order is a cost-reimbursement, incentive, time and material, or labor hour order, and will exceed \$100,000.
- 52.215-10           **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA** – This clause applies if the price of this Order was determined by negotiation. In paragraph (c) the term “Contracting Officer” does not change. As required by applicable law or regulation, Seller shall provide cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed in FAR 15.804-4. In addition to any remedies provided by law, if Buyer is subjected to any liability as a result of Seller’s failure to comply with this requirement, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense (excluding Buyer’s overhead and profit) resulting from such failure.
- 52.215-11           **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS** - This clause applies if the price of this Order was determined by negotiation. As required by applicable law or regulation, Seller shall provide cost or pricing data and execute a Certificate of Current Cost or Pricing Data in substantially the form prescribed in FAR 15.804-4. In addition to any remedies provided by law, if Buyer is subjected to any liability as a result of Seller’s failure to comply with this requirement, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage or expense (excluding Buyer’s overhead and profit) resulting from such failure.
- 52.215-12           **SUBCONTRACTOR COST OR PRICING DATA** - This clause applies if the price of this Order was determined by negotiation. In addition, Seller shall indemnify and hold Buyer harmless from and against any loss, cost or damage incurred by Buyer under Buyer’s contract with its customers as a result of Seller or Seller’s Subcontractors providing defective cost or pricing data in connection with this provision.
- 52.215-13           **SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS** - This clause applies if the price of this Order was determined by negotiation. In addition, Seller shall indemnify and hold Buyer harmless from and against any loss, cost or damage incurred by Buyer under Buyer’s contract with its customers as a result of Seller or Seller’s Subcontractors providing defective cost or pricing data in connection with this provision.
- 52.215-14           **INTEGRITY OF UNIT PRICES** (applies if order will exceed \$100,000)
- 52.215-16           **FACILITIES CAPITAL COST OF MONEY** - This clause applies if the price of this Order was determined by negotiation.
- 52.219-8           **UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN OWNED SMALL BUSINESS CONCERNS** (applies if order will exceed \$100,000 and seller is a US company)
- 52.219-9           **SMALL, SMALL DISADVANTAGED AND WOMEN OWNED SMALL BUSINESS SUBCONTRACTING PLAN** - This clause does not apply to small business concerns. It applies only if this Order exceeds \$500,000 and seller is a US company.
- 52.222-2           **PAYMENT FOR OVERTIME PREMIUMS** – The authorized overtime premium in paragraph (a) is \$0, unless authorized otherwise in writing by Buyer.
- 52.222-4           **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION** (applies if order will exceed \$100,000)

- 52.222-20 **WALSH-HEALY PUBLIC CONTRACTS ACT** (applies if order will exceed \$10,000)
- 52.222-26 **EQUAL OPPORTUNITY** (applies if order will exceed \$10,000 and seller is a US company)
- 52.222-35 **AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS** - This clause applies if this Order is \$25,000 or more and seller is a US company.
- 52.222-36 **AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS** (applies if seller is a US company)
- 52.222-37 **EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA** - This clause applies if this Order is \$25,000 or more and seller is a US company.
- 52.227-1 **AUTHORIZATION AND CONSENT** - Alternate I is applicable if this Order is for R&D and seller is a US company.
- 52.227-2 **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT** - This clause applies only if this Order is over \$100,000.
- 52.227-11 **PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM)** - This clause applies if this order is for experimental, developmental, or research work and (1) the Subcontractor is a small business or (2) this Order is with a non-profit organization.
- 52.227-12 **PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LONG FORM)** - This clause applies if this Order is for experimental, developmental, or research work and FAR 52.227-11 above does not apply.
- 52.227-14 **RIGHTS IN DATA - GENERAL** - Including Alternates I, II, III, IV, V (applies if seller is a US company)
- 52.230-2 **COST ACCOUNTING STANDARDS** - This clause, except paragraph (b), applies to this Order if the value is in excess of \$500,000, and to all subcontracts of any tier, unless otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.
- 52.230-3 **DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES** (applies if order exceeds \$500,000)
- 52.230-6 **ADMINISTRATION OF COST ACCOUNTING STANDARDS** (applies if FAR 52.230-2 or FAR 52.230-3 applies)
- 52.244-2 **SUBCONTRACTS** – This clause applies if the order is either a fixed price type greater than \$100,000, a time and material type or a labor hour type.
- 52.244-5 **COMPETITION IN SUBCONTRACTING** - This clause applies if the order price is determined by negotiation and is either a Fixed Price type greater than \$100,000, a Time and Material type or a Labor Hour type.
- 52.244-6 **SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS**
- 52.245-5 **GOVERNMENT PROPERTY** (applies to Cost Reimbursement, Time and Material, and Labor Hour Contracts)
- 52.246-3 **INSPECTION OF SUPPLIES** – This clause applies to Cost Reimbursement type

orders.

- 52.246-23 **LIMITATION OF LIABILITY** - This clause applies only if this Order exceeds or is expected to exceed \$25,000.
- 52.246-25 **LIMITATION OF LIABILITY-SERVICES** - This clause applies only if this Order exceeds or is expected to exceed \$25,000.
- 52.247-63 **PREFERENCE FOR U.S. FLAG CARRIERS** – This clause applies if international air transportation will be used.
- 52.247-64 **PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS** – This clause applies if ocean transportation is required.
- 52.249-6 **TERMINATION** (Applies to Cost Reimbursement Contracts)

**THE FOLLOWING DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFAR) CLAUSES ARE INCORPORATED HEREIN BY REFERENCE.**

- 252.203-7001 **SPECIAL PROHIBITION ON EMPLOYMENT** - This clause applies to first tier subcontractors only if the Order exceeds \$100,000. "Government" is not changed in this clause. A new paragraph (f) has been added as follows: "Seller shall not employ or allow to serve, as director or consultant of Seller, any person in contravention of paragraph (b)."  
252.203-7001(f) is changed to (g) and the flowdown provision at 252.203-7001(g) has been deleted. The telephone number in paragraph (h) has been updated, (202) 616-3507.
- 252.225-7001 **BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM** - This clause applies to Orders for prime contract line items, typically large components or subsystems. "Government" is not changed in this clause.
- 252.225-7002 **QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS** - - This clause applies to Orders for prime contract line items, typically large components or subsystems. "Government" is not changed in this clause.
- 252.225-7009 **DUTY-FREE ENTRY - QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES** - This clause applies to Orders involving supplies to be accorded duty-free entry under the prime contract. Paragraph (e) is modified to read "The Buyer will obtain from the Government duty-free entry of qualifying country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause. No change to "Contracting Officer", "Government", "prime contractor" or "prime contract" in paragraphs (c), (d), (i) or (k); except change "Contracting Officer administering the prime contract" and "contract administration office" in paragraph (i) to "Buyer's Purchasing Representative" and "Contracting Officer" in paragraph (i) (10) to "Government".
- 252.225-7010 **DUTY FREE ENTRY - ADDITIONAL PROVISIONS** - Delete "administering the prime contract" after "Contracting Officer" and "contract or" before "subcontract in paragraph (c). No change to "Government" in (c)(10), (e)(1) or (g)(1). No change to "Contracting Officer" in (d) but change "Contracting Officer" in (c)(10) to "Government".
- 252.225-7012 **PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES** (applies if order will exceed \$100,000)
- 252.225-7014 **PREFERENCE FOR DOMESTIC SPECIALTY METALS** (applies if order will exceed \$100,000 and the delivery of specialty metals is required)
- 252.225-7026 **REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES** - This clause applies to first tier subcontracts over \$500,000. Paragraphs (a) (1), (b) (1), (b) (3) and (c) are deleted. Paragraphs (a)(2), (a)(3) and (b)(2) have been renumbered and

revised as follows:

(a)(1) "Subcontracts exceeding \$500,000 that could be performed..."

(a)(2) "Subcontracts exceeding \$25,000 that will be performed..."

(b)(1) delete everything after "known".

Paragraph (a)(3)(ii) is renumbered and changed to read "Seller's" for "Offeror's". Delete "Offeror in (b)(4).

- 252.227-7013 **RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS** - This clause is applicable when technical data, but not software, will be delivered to the Government by the prime contractor from the subcontractor. "[T]o the Contractor" has been deleted from (b)(1)(vi) and "contract or" and "thereunder" have been deleted from (b)(1)(ix). "Buyer or" is added before "Government" in (c) and (i). The second and third occurrences of "Contracting Officer" are changed to "Government" in (e)(4). "And the Government" is added after "parties" in (h)(1). In (h)(2) "sixty (60)" is changed to "fifty (50)" days. No substitutions for "Government" have been made.
- 252.227-7014 **RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION** - This clause is not applicable when the only deliverable items are technical data (other than computer software documentation), commercial computer software or commercial computer software documentation, special works, or contracts under the SBIR Program. This clause is applicable when software and software documentation will be delivered to the Government by the prime contractor from the subcontractor. "[T]o the Contractor" has been deleted from (b)(1)(iii) and "contract or" and "thereunder" have been deleted from (b)(1)(vi). "Buyer or" is added before "Government" in (i). The second and third occurrences of "Contracting Officer" have been changed to "Government" in (e)(4). "And the Government" is added after "parties" in (h)(1). In (h)(2) "sixty (60)" is changed to "fifty (50)" days. No substitutions for "Government" have been made.
- 252.227-7015 **TECHNICAL DATA - COMMERCIAL ITEMS**
- 252.227-7037 **VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA**

**THE FOLLOWING DEPARTMENT OF ENERGY FEDERAL ACQUISITION REGULATION SUPPLEMENT (DEAR) CLAUSES ARE INCORPORATED HEREIN BY REFERENCE.**

- 952.227-9 **REFUND OF ROYALTIES** – This clause applies if royalties greater than \$250 are included in the price.
- 952.227-13 **PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT**  
In paragraph (b), Allocation of principal rights, the term "Government" does not change and the "Contractor" changes to "Seller" rather than "Buyer" throughout the clause. This clause applies to experimental, developmental, demonstration or research work.
- 952.247-70 **FOREIGN TRAVEL** – "45 days" is changed to "60 days" in subparagraph (b). This clause applies if travel is required in the Order.
- 952.245-5 **GOVERNMENT PROPERTY** (applies to Cost Reimbursement, Time and Material, or Labor Hour Contracts) except FAR 52.245-2(g) Risk of Loss is substituted for 52.245-5(g) Limited Risk of Loss.
- 952.251-70 **CONTRACTOR EMPLOYEE DISCOUNTS** -- This clause applies if travel is required in the Order.

**B-3 PROVISIONS APPLICABLE TO NONCOMMERCIAL FIXED PRICE ORDERS**

In addition to the General Provisions of Section A. and the FAR, DFAR and DEAR provisions of Section B-2, the following clauses of the FAR are applicable if this is a fixed price order.

- 52.242-17 **GOVERNMENT DELAY OF WORK**
- 52.243-1 **CHANGES -- FIXED-PRICE** (Alternate II)
- 52.245-2 **GOVERNMENT PROPERTY (FIXED PRICE)** - "Government" means Buyer except; 1) in the terms "Government furnished property," "Government Property," and "Government

Owned Property” and 2) the second time it appears in paragraph (b) (1) (ii), and 3) in paragraph (c) (1). “Government” means Government or Buyer; 1) in paragraph (f) and 2) in paragraph (h) and subparagraph (j) (1). The fourth sentence of paragraph (h) is changed to read “Neither the Government or the Buyer shall be liable...”

- 52.246-2 **INSPECTION OF SUPPLIES - FIXED PRICE**
- 52.246-16 **RESPONSIBILITY FOR SUPPLIES**
- 52.246-17 **WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE** - In paragraph (b) (1) and (c) (1) insert the words, “one year after acceptance.”
- 52.249-1 **TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM)** - This clause applies only if at the time of termination, this Order does not exceed \$100,000.
- 52.249-2 **TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) -**  
This clause applies only if at the time of termination, the Order exceeds \$100,000
- 52.249-8 **DEFAULT (FIXED PRICE SUPPLY AND SERVICE)**
- 52.246-4 **INSPECTION OF SERVICES - FIXED PRICE** (Aug 1996)

**B-4 PROVISIONS APPLICABLE TO NONCOMMERCIAL COST REIMBURSEMENT ORDERS**

In addition to the General Provisions of Section A. and the FAR, DFAR and DEAR provisions of Section B-2, the following clauses of the FAR are applicable if this is a cost reimbursable order.

- 52.216-7 **ALLOWABLE COST AND PAYMENT**
- 52.216-8 **FIXED FEE**
- 52.222-2 **PAYMENT FOR OVERTIME PREMIUMS** - This clause applies only for cost reimbursement orders exceeding \$100,000. The authorized overtime premium in paragraph (a) is \$0, unless otherwise specified on the face of the Order.
- 52.229-10 **STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX**  
Applicable if the Order will be for services to be performed in whole or in part within the State of New Mexico and if this Order directs or authorizes the Seller to acquire tangible personal property as a direct cost under this Order and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor.
- 52.232-20 **LIMITATION OF COST**
- 52.232-22 **LIMITATION OF FUNDS** - This clause applies only if this order is incrementally funded.
- 52.243-2 **CHANGES - COST REIMBURSEMENT (ALTERNATE II)**
- 52.244-2 **SUBCONTRACTS (COST-REIMBURSEMENT AND LETTER CONTRACTS)**
- 52.245-5 **GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR HOUR CONTRACTS)** - except FAR 52-245-2(g) Risk of Loss is substituted for 52-245-5(g). Limited Risk of Loss.
- 52-246-3 **INSPECTION OF SUPPLIES - COST REIMBURSEMENT**
- 52.246-5 **INSPECTION OF SERVICES - COST REIMBURSEMENT**
- 52.249-6 **TERMINATION (COST REIMBURSEMENT)**
- 52.249-14 **EXCUSABLE DELAYS**

**B-5 PROVISIONS APPLICABLE TO NONCOMMERCIAL TIME & MATERIAL OR LABOR HOUR ORDERS**

In addition to the General Provisions of Section A. and the FAR, DFAR and DEAR provisions of Section B-2, the following clauses of the FAR are applicable if this is a time and material or labor-hour type of order.

- 52.232-7 **PAYMENTS UNDER TIME-AND-MATERIAL AND LABOR HOUR CONTRACTS**
- 52.243-3 **CHANGES** - Time and Materials or Labor-Hours
- 52.245-5 **GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR HOUR CONTRACTS)** - except FAR 52-245-2(g) Risk of Loss is substituted for 52-245-5(g). Limited Risk of Loss.
- 52.246-6 **INSPECTION - TIME-AND-MATERIAL AND LABOR-HOUR**
- 52.249-6 **TERMINATION (COST REIMBURSEMENT)**
- 52.249-8 **DEFAULT (FIXED PRICE SUPPLY AND SERVICE)**
- 52.249-14 **EXCUSABLE DELAYS**