

PRIME CONTRACT FLOW DOWN CLAUSES

I.1 CLAUSES INCORPORATED BY REFERENCE

This Purchase Order incorporates herein clauses by reference, with the same force and effect as if they were given in full text. If any such clause is inapplicable to this specific acquisition due to the clause's prescription, they are considered self-deleting. Upon Subcontractor request, the Prime Contractor will inform Subcontractor as to where the full text of the referenced clause may be found. The applicable version of these clauses is the version in effect on the date of the Subcontract award. To the extent that an earlier version of any such clause is included in the Prime Contract under which this Subcontract is issued, the date of the clause as it appears in such Prime Contract shall be controlling and said version shall be incorporated herein.

All provisions and clauses of the SeaPort NxG contract N0017819D8547 apply to this Task Order. <https://saalex.com/prime-contract-terms-and-conditions/>

Nothing in this Subcontract shall be construed as modifying or limiting the Government's right to authorize the subcontractor's use of any designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information the Government owns or has the right use.

It is a material part of these Terms and Conditions that govern any purchase order/subcontract issued by the Prime Contractor pursuant to a Government contract, that the vendor/subcontractor shall include the appropriate FAR and DFARS flow down clauses in each lower-tier purchase order or subcontract. Failure to do so will constitute a material breach of these Terms and Conditions.

CLAUSES INCORPORATED BY FULL TEXT

5252.247-9507 PACKAGING AND MARKING OF REPORTS (NAVAIR) (OCT 2005)

- (a) All unclassified data shall be prepared for shipment in accordance with best commercial practice. Classified reports, data and documentation, if any, shall be prepared for shipment in accordance with the National Industry Security Program Operating Manual, DoD 5220.22-M.
- (b) The contractor shall prominently display on the cover of each report the following information:
 - (1) Name and business address of contractor.
 - (2) Contract Number/Delivery/Task order number.
 - (3) Contract/Delivery/Task order dollar amount.
 - (4) Whether the contract was competitively or non-competitively awarded.
 - (5) Name of sponsoring individual.
 - (6) Name and address of requiring activity.

5252.247-9508 PROHIBITION AND LIMITATIONS FOR PACKAGING MATERIALS (NAVAIR) (AUG 2019)

The use of loose fill materials, asbestos, excelsior, newspaper and shredded paper (all types) are prohibited. In addition, all Wood Packaging Materials (WPM) shall be heat treated or chemically treated in accordance with the requirements of the International Standards for Phytosanitary Measures (ISPM) 15:2009, "Regulation of Wood Packaging Material in International Trade."

5252.209-9510 ORGANIZATIONAL CONFLICTS OF INTEREST (NAVAIR) (SERVICES) (MAR 2007)

(a) Purpose. This clause seeks to ensure that the contractor (1) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this Task Order, and (2) is not biased because of its current or planned interests (financial, contractual, organizational or otherwise) that relate to the work under this Task Order.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor (as defined in paragraph (d)(7)) in the activities covered by this clause.

(1) The restrictions set forth in paragraph (e) apply to supplies, services, and other performance rendered with respect to the suppliers and/or equipment listed in **Attachment 06, Organizational Conflicts of Interest (OCI)**. The Task Order will specify to which suppliers and/or equipment subparagraph (f) restrictions apply.

(2) The financial, contractual, organizational and other interests of contractor personnel performing work under this Task Order shall be deemed to be the interests of the contractor for the purposes of determining the existence of an Organizational Conflict of Interest. Any subcontractor that performs any work relative to this Task Order shall be subject to this clause. The contractor agrees to place in each subcontract affected by these provisions the necessary language contained in this clause.

(c) Waiver. Any request for waiver of the provisions of this clause shall be submitted in writing to the Procuring Contracting Officer. The request for waiver shall set forth all relevant factors including proposed contractual safeguards or job procedures to mitigate conflicting roles that might produce an Organizational Conflict of Interest. No waiver shall be granted by the Government with respect to prohibitions pursuant to access to proprietary data.

(d) Definitions. For purposes of application of this clause only, the following definitions are applicable:

- (1) "System" includes system, major component, subassembly or subsystem, project, or item.
- (2) "Nondevelopmental items" as defined in FAR 2.101.
- (3) "Systems Engineering" (SE) includes, but is not limited to, the activities in FAR 9.505-1(b).
- (4) "Technical direction" (TD) includes, but is not limited to, the activities in FAR 9.505-1(b).
- (5) "Advisory and Assistance Services" (AAS) as defined in FAR 2.101.
- (6) "Consultant services" as defined in FAR 31.205-33(a).
- (7) "Contractor", for the purposes of this clause, means the firm signing this contract, its subsidiaries and affiliates, joint ventures involving the firm, any entity with which the firm may hereafter merge or affiliate, and any other successor or assignee of the firm.
- (8) "Affiliates," means officers or employees of the prime contractor and first tier subcontractors involved in the program and technical decision-making process concerning this Task Order.
- (9) "Interest" means organizational or financial interest.
- (10) "Weapons system supplier" means any prime contractor or first tier subcontractor engaged in, or having a known prospective interest in the development, production or analysis of any of the weapon systems, as well as any major component or subassembly of such system.

(e) Contracting restrictions.

[X] (1) To the extent the contractor provides systems engineering and/or technical direction for a system or commodity but does not have overall contractual responsibility for the development, the integration, assembly and checkout (IAC) or the production of the system, the contractor shall not (i) be awarded a contract to supply the system or any of its major components or (ii) be a subcontractor or consultant to a supplier of the system or of its major components. The contractor agrees that it will not supply to the Department of Defense (either as a prime contractor or as a subcontractor) or act as consultant to a supplier of, any system, subsystem, or major component utilized for or in connection with any item or other matter that is (directly or indirectly) the subject of the systems engineering and/or technical direction or other services performed under this Task Order for a period of **three (3) years** after the date of completion of the Task Order. (FAR 9.505-1(a))

[X] (2) To the extent the contractor prepares and furnishes complete specifications covering nondevelopmental items to be used in a competitive acquisition, the contractor shall not be allowed to furnish these items either as a prime contractor or subcontractor. This rule applies to the initial production contract, for such items plus a specified time period or event. The contractor agrees to prepare complete specifications covering non-developmental items to be used in competitive acquisitions, and the contractor agrees not to be a supplier to the Department of Defense, subcontract supplier, or a consultant to a supplier of any system or subsystem for which complete specifications were prepared hereunder. The prohibition relative to being a supplier, a subcontract supplier, or a consultant to a supplier of these systems of their subsystems extends for a period of **three (3) years** after the terms of this Task Order. (FAR 9.505-2(a)(1))

[X] (3) To the extent the contractor prepares or assists in preparing a statement of work to be used in competitively acquiring a system or services or provides material leading directly, predictably and without delay to such a work statement, the contractor may not supply the system, major components thereof or the services unless the contractor is the sole source, or a participant in the design or development work, or more than one contractor has been involved in preparation of the work statement. The contractor agrees to prepare, support the preparation of or provide material leading directly, predictably and without delay to a work statement to be used in competitive acquisitions, and the contractor agrees not to be a supplier or consultant to a supplier of any services, systems or subsystems for which the contractor

participated in preparing the work statement. The prohibition relative to being a supplier, a subcontract supplier, or a consultant to a supplier of any services, systems or subsystems extends for a period of **three (3) years** after the terms of this Task Order. (FAR 9.505-2(b)(1))

[X] (4) To the extent work to be performed under this Task Order requires evaluation of offers for products or services, a contract will not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government's interests. Contractor agrees to the terms and conditions set forth in the Statement of Work that are established to ensure objectivity to protect the Government's interests. (FAR 9.505-3)

[X] (5) To the extent work to be performed under this contract requires access to proprietary data of other companies, the contractor must enter into agreements with such other companies which set forth procedures deemed adequate by those companies (i) to protect such data from unauthorized use or disclosure so long as it remains proprietary and (ii) to refrain from using the information for any other purpose other than that for which it was furnished. Evidence of such agreement(s) must be made available to the Procuring Contracting Officer upon request. The contractor shall restrict access to proprietary information to the minimum number of employees necessary for performance of this contract. Further, the contractor agrees that it will not utilize proprietary data obtained from such other companies in preparing proposals (solicited or unsolicited) to perform additional services or studies for the United States Government. The contractor agrees to execute agreements with companies furnishing proprietary data in connection with work performed under this contract, obligating the contractor to protect such data from unauthorized use or disclosure so long as such data remains proprietary, and to furnish copies of such agreement to the Contracting Officer. Contractor further agrees that such proprietary data shall not be used in performing for the Department of Defense additional work in the same field as work performed under this Task Order if such additional work is procured competitively. (FAR 9.505)

[X] (6) Preparation of Statements of Work or Specifications. If the contractor under this Task Order assists substantially in the preparation of a statement of work or specifications, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort (solicited or unsolicited) that is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restrictions in this subparagraph shall not apply. Contractor agrees that it will not supply to the Department of Defense (either as a prime contractor or as a subcontractor) or act as consultant to a supplier of, any system, subsystem or major component utilized for or in connection with any item or work statement prepared or other services performed or materials delivered under this Task Order, and is procured on a competitive basis, by the Department of Defense with **three (3) years** after completion of work under this contract. The provisions of this clause shall not apply to any system, subsystem, or major component for which the contractor is the sole source of supply or which it participated in designing or developing. (FAR 9.505-4(b))

[X] (7) Advisory and Assistance Services (AAS). If the contractor provides AAS services as defined in paragraph (d) of this clause, it shall be ineligible thereafter to participate in any capacity in Government contractual efforts (solicited or unsolicited) which stem directly from such work, and the contractor agrees not to perform similar work for prospective offerors with respect to any such contractual efforts. Furthermore, unless so directed in writing by the Contracting Officer, the contractor shall not perform any such work under this Task Order on any of its products or services, or the products or services of another firm for which the contractor performs similar work. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for AAS.

(f) Remedies. In the event the contractor fails to comply with the provisions of this clause, such noncompliance shall be deemed a material breach of the provisions of this Task Order. If such noncompliance is the result of conflicting financial interest involving contractor personnel performing work under this contract, the Government may require the contractor to remove such personnel from performance of work under this Task Order. Further, the Government may elect to exercise its right to terminate for default in the event of such noncompliance. Nothing herein shall prevent the Government from electing any other appropriate remedies afforded by other provisions of this Task Order, or statute or regulation.

(g) Disclosure of Potential Conflicts of Interest. The contractor recognizes that during the term of this Task Order, conditions may change which may give rise to the appearance of a new conflict of interest. In such an event, the contractor shall disclose to the Government information concerning the new conflict of interest. The contractor shall provide, as a minimum, the following information:

- (1) a description of the new conflict of interest (e.g., additional weapons systems supplier(s), corporate restructuring, new first-tier subcontractor(s), new contract) and identity of parties involved;
- (2) a description of the work to be performed;
- (3) the dollar amount;
- (4) the period of performance; and
- (5) a description of the contractor's internal controls and planned actions, to avoid any potential organizational conflict of interest.

5525.211-9510 CONTRACTOR EMPLOYEES (NAVAIR) (MAY 2011)

(a) In all situations where contractor personnel status is not obvious, all contractor personnel are required to identify themselves to avoid creating an impression to the public, agency officials, or Congress that such contractor personnel are Government officials. This can occur during meeting attendance, through written (letter or email) correspondence or verbal discussions (in person or telephonic), when making presentations, or in other situations where their contractor status is not obvious to third parties. This list is not exhaustive. Therefore, the contractor employee(s) shall:

- (1) Not by word or deed give the impression or appearance of being a Government employee;

- (2) Wear appropriate badges visible above the waist that identify them as contractor employees when in Government spaces, at a Government-sponsored event, or an event outside normal work spaces in support of the contract/order;
- (3) Clearly identify themselves as contractor employees in telephone conversations and in all formal and informal written and electronic correspondence. Identification shall include the name of the company for whom they work;
- (4) Identify themselves by name, their company name, if they are a subcontractor the name of the prime contractor their company is supporting, as well as the Government office they are supporting when participating in meetings, conferences, and other interactions in which all parties are not in daily contact with the individual contractor employee; and
- (5) Be able to provide, when asked, the full number of the contract/order under which they are performing, and the name of the Contracting Officer's Representative.
 - (b) If wearing a badge is a risk to safety and/or security, then an alternative means of identification may be utilized if endorsed by the Contracting Officer's Representative and approved by the Contracting Officer.
 - (c) The Contracting Officer will make final determination of compliance with regulations with regard to proper identification of contractor employees.

CLAUSES INCORPORATED BY REFERENCE

- 52.204-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (AUG 2020)
- 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)
- 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)
- 52.223-10 WASTE REDUCTION PROGRAM (MAY 2011)
- 52.224-3 PRIVACY TRAINING (JAN 2017)
- 52.232-22 LIMITATION OF FUNDS (APR 1984)
- 252.223-7999 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2021-00009) (OCT 2021)
- 252.232-7017 ACCELERATING PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS—PROHIBITION ON FEES AND CONSIDERATION (APR 2020)
- 252.225-7040 CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (OCR 2015)
- 252.225-7976 CONTRACTOR PERSONNEL PERFORMING IN JAPAN (DEVIATION 2018-O0019) (AUG 2018)
- 252.246-7008 SOURCES OF ELECTRONIC PARTS (MAY 2018)

CLAUSES INCORPORATED BY FULL TEXT

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252.204-7023 REPORTING REQUIREMENTS FOR CONTRACTED SERVICES—ALTERNATE I (JUL 2021)

- (a) Definition. As used in this clause-- “First-tier subcontract” means a subcontract awarded directly by the contractor for the purpose of acquiring services for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies or services that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

(b) The contractor shall report annually, by October 31, at <https://www.sam.gov>, on services performed during the preceding Government fiscal year (October 1 - September 30) under this contract or agreement for each order, including any first-tier subcontract, which exceeds \$3 million for services in the following service acquisition portfolio groups:

- (1) Logistics management services.
- (2) Equipment-related services.
- (3) Knowledge-based services.
- (4) Electronics and communications services.

(c) The Contractor shall report the following information for the order:

- (1) The total dollar amount invoiced for services performed during the preceding Government fiscal year under the order.
- (2) The number of Contractor direct labor hours, to include first-tier subcontractor direct labor hours, as applicable, expended on the services performed under the order during the previous Government fiscal year.

(d) The Government will review the Contractor's reported information for reasonableness and consistency with available contract information. In the event the Government believes that revisions to the Contractor's reported information are warranted, the Government will notify the Contractor. Upon notification, the Contractor shall revise the reported information or provide the Government with a supporting rationale for the information.