## I.1 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) (FAR 52.252-2)

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(s):

www.acquisition.gov/far/index.html.

**FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES**

| NUMBER | TITLE | DATE |
|---|---|---|
| 52.202-1 | DEFINITIONS | JUL 2004 |
| 52.203-3 | GRATUITIES | APR 1984 |
| 52.203-5 | CONVENANT AGAINST CONTINGENT FEES | APR 1984 |
| 52.203-6 | RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT | SEPT 2006 |
| 52.203-7 | ANTI-KICKBACK PROCEDURES | OCT 2010 |
| 52.203-8 | CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY | JAN 1997 |
| 52.203-10 | PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY | JAN 1997 |
| 52.203-12 | LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS | OCT 2010 |
| 52.203-13 | CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT | APR 2010 |
| 52.203-14 | DISPLAY OF HOTLINE POSTER(S) | DEC 2007 |
| 52.204-2 | SECURITY REQUIREMENTS | AUG 1996 |
| 52.204-4 | PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER | AUG 2000 |
| 52.204-7 | CENTRAL CONTRACTOR REGISTRATION | APR 2008 |
| 52.204-9 | PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL | JAN 2011 |
| 52.204-10 | REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACTOR AWARDS | JUL 2010 |
| 52.209-6 | PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT | DEC 2010 |
| 52.210-11 | MARKET RESEARCH | APR 2011 |
| 52.211-5 | MATERIAL REQUIREMENTS | AUG 2000 |

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| 52.215-2 | AUDIT AND RECORDS—NEGOTIATION | OCT 2010 |
| 52.215-8 | ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT | OCT 1997 |
| 52.215-10 | PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA | AUG 2011 |
| 52.215-11 | PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS | AUG 2011 |
| 52.215-12 | SUBCONTRACTOR CERTIFIED COST OR PRICING DATA | OCT 2010 |
| 52.215-13 | SUBCONTRACTOR CERTIFIED COST OR PRICING DATA—MODIFICATIONS | OCT 2010 |
| 52.215-14 | INTEGRITY OF UNIT PRICES | OCT 2010 |
| 52.215-15 | PENSION ADJUSTMENTS AND ASSET REVERSIONS | OCT 2010 |
| 52.215-17 | WAIVER OF FACILITIES CAPITAL COST OF MONEY | OCT 1997 |
| 52.215-18 | REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS | JUL 2005 |
| 52.215-19 | NOTIFICATIONS OF OWNERSHIP CHANGES | OCT 1997 |
| 52.215-21 | REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS | OCT 2010 |
| 52.216-7 | ALLOWABLE COST AND PAYMENT | JUN 2011 |
| 52.216-8 | FIXED FEE | JUN 2011 |
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| 52.219-4 | NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS | JAN 2011 |
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| 52.219-28 | POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION | APR 2009 |
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| 52.222-2 | PAYMENT FOR OVERTIME PREMIUMS | JUL 1990 |

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| 52.222-26 | EQUAL OPPORTUNITY | MAR 2007 |
| 52.222-35 | EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS | SEP 2010 |
| 52.222-36 | AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES | OCT 2010 |
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| 52.223-15 | ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS | DEC 2007 |
| 52.223-18 | CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING | SEP 2010 |
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| 52.227-2 | NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT | DEC 2007 |
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| 52.227-21 | TECHNICAL DATA DECLARATION, REVISION, AND WITHOLDING OF PAYMENT—MAJOR SYSTEMS | DEC 2007 |
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| 52.233-3 | PROTEST AFTER AWARD | AUG 1996 |
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| 52.243-6 | CHANGE ORDER ACCOUNTING | APR 1984 |
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| 52.244-2 | SUBCONTRACTS | OCT 2010 |
| | FIRST FILL IN: Design Agent; C4ISR Systems Integrator | |
| 52.244-5 | COMPETITION IN SUBCONTRACTING | DEC 2006 |
| 52.244-6 | SUBCONTRACTS FOR COMMERCIAL ITEMS | DEC 2010 |
| | ALT I | JUNE 2010 |
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| 52.247-68 | REPORT OF SHIPMENT (REPSHIP) | FEB 2006 |
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**FAR Clause(s) Applicable to Phase II Only**

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**HOMELAND SECURITY ACQUISITION REGULATION (HSAR) CLAUSES**

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| 3052.209-72 | ORGANIZATIONAL CONFLICT OF INTEREST | JUN 2006 |
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| 3052.222-70 | STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK | DEC 2003 |
| 3052.223-70 | REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCE-APPLICABLE LICENSES AND PERMITS | JUN 2006 |
| 3052.231-70 | PRECONTRACT COSTS | DEC 2003 |
| 3052.245-70 | GOVERNMENT PROPERTY REPORTS. [DEVIATION] | AUG 2008 |
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| 3052.204-71 | Contractor Employee Access | JUN 2006 |
| 3052.209-72 | Organizational Conflict of Interest | JUN 2006 |

## I.4 Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2011) (FAR 52.209-8)

a. The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the Central Contractor Registration database at http://www.ccr.gov.

b. (1) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3)(i) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(ii) As required by section 3010 of Public Law 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(End of clause)

## I.5 Incentive Price Revision - Firm Target (OCT 1997)(FAR 52.216 – 16)

(a) General. The supplies or services identified in the Schedule as Items 1701, 1801, 1901, 2001, 2102 and 2201 are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price as set forth in Section B. Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) Definition. Costs, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Data submission. (1) Within 120 days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall submit in the format of Table 152, FAR 15.408, or in any other form on which the parties agree (i) A detailed statement of all costs

incurred up to the end of that month in performing all work under the items; (ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items; (iii) A list of all residual inventory and an estimate of its value; and (iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) Price revision. Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) above by applying to final negotiated cost an adjustment for profit or loss, as follows: (1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows: (i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less the percentage established in Section B for each line item of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus the percentage established in Section B for each line item percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) Contract modification. The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that (1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and (2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) Adjusting billing prices. (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

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(2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices.

Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) Quarterly limitation on payments statement. This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing (i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established; (ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; (iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established, increased or decreased in accordance with subparagraph (d)(2) above, when the amount stated under subdivision (ii), immediately above, differs from the aggregate target costs of the supplies or services; and (iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits affected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments

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clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) Subcontracts. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) Disagreements. If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) Termination. If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) Equitable adjustment under other clauses. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) Exclusion from target price and total final price. If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) Separate reimbursement. If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) Taxes. As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term contract price includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

**I.5 Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (FAR 52.223-9)**

a. *Definitions*. As used in this clause—

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. b. The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to U. S. Coast Guard Contracting Officer.

(End of clause)

**I.6 Ozone-Depleting Substances (May 2001) (FAR 52.223-11)**

a. *Definition*. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

b. The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(End of clause)

**I-7 Performance and Payment Bonds—Other Than Construction (NOV 2006) (FAR 52.228-16)**

a. *Definitions*. As used in this clause—

> "Original contract price" means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

b. The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the original contract price and a payment bond (Standard Form 1416) in an amount equal to _____ percent of the original contract price.

c. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____ days, but in any event, before starting work.

d. The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

e. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

> U.S. Department of the Treasury
> Financial Management Service
> Surety Bond Branch
> 3700 East West Highway, Room 6F01
> Hyattsville, MD 20782.
> Or via the internet at http://www.fms.treas.gov/c570/.

(End of clause)

**I.8 Performance-Based Payments (APR 2012) (FAR 52.232-32)**

(a) *Amount of payments and limitations on payments*. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and

limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment*. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) *Approval and payment of requests.*

(1) The Contractor shall not be entitled to payment of a request for performance based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30$^{th}$ day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) *Liquidation of performance-based payments.*

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

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(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments*. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

(i) Failure to make progress; or
(ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) *Title.*

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;
(ii) Special tooling and special test equipment to which the Government is to acquire title;
(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (f)(2)(ii) of this clause; and
(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (*e.g.*, the termination clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor shall obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or
(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) *Risk of loss*. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls*. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access*. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

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(j) *Special terms regarding default*. If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights.*

(1) No payment or vesting of title under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment*. The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for performance-based payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) Such information and documentation as is required by the contract's description of the basis for payment; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification*. As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

**I-9 Industrial Resources Developed Under Defense Production Act Title III (DEC 1994) (FAR 52.234-1)**

(a) *Definitions*. "Title III industrial resource" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091- 2093).

"Title III project contractor" means a contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091-2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will

make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

(End of clause)

## I.10 WARRANTY OF SUPPLIES OF A COMPLEX NATURE (MAY 2011) (FAR 52.246-18)

(a) Definitions

Acceptance" as used in this clause is deemed to have the same meaning as "preliminary acceptance" as defined in this contract in Clause E.005
"Correction," as used in this clause, means the elimination of a defect.

The terms "supply" or "supplies" shall include and have the same meaning as that set forth in FAR 2.101. The term specifically includes technical data furnished by the contractor under this contract.

“Defects,” the word “defects” as used in this clause means any and all defects, deficiencies, non-compliances, and failures, except those caused by Government misuse or mishandling. This provision is not intended to cover latent defects.

(b) Contractor's obligations

(1) The Contractor warrants that for two years on lead hull and one year on follow hulls, from the date of acceptance, all supplies furnished under this contract, will be free from defects in materials and workmanship and will conform to the applicable requirements of the contract; provided, however, that with respect to Government Furnished Property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.

(2) The Contractor shall provide all labor and resources to correct defects at the location of the asset affected by the defect. Depending on the nature of the defect, the Contractor may effect the correction at an alternate location proposed by the Contractor and approved by the Contracting Officer, Contracting Officer’s Technical Representative or Government Warranty Officer. The Contractor shall coordinate availability of the asset for correcting defects with the Government Warranty Officer in order to promptly correct the defect at the first reasonable opportunity.

(3) The Contractor shall promptly correct defects upon notification by the Contracting Officer or Government Warranty Officer. If the Government Warranty Officer or Contracting

Officer indicates that the defect is of a "routine" nature and does not provide a specific required correction date, but the Contractor does not correct, or expects not to be able to correct, the defect within fifteen (15) calendar days of notification, the Contractor shall notify the Government of the expected completion date with an explanation as to the reason for delay prior to the expiration of the fifteen (15) calendar day period. In the case where the Government provides a date by which the defect shall be corrected that is later than fifteen (15) calendar days after notification, and the Contractor does not correct or expects not to be able to correct the defect by the date provided by the Government, the Contractor shall notify the Government of the proposed expected completion date with an explanation as to the reason for delay as soon as possible; but in no case shall the Contractor notify the Government later than the date provided by the Government for completion of the correction. If the asset has not been made available to the Contractor for correction by action of the Government, the Contractor shall notify the Contracting Officer or Warranty Officer of the non-availability and the Contractor shall not be responsible for any delay that occurred prior to the asset being made available to them.

(4) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract applicable to affected asset). If preferred by the Contractor, new drawings or data may be prepared.

(5) In the event that supplies are returned to the Contractor as part of the effort to correct a defect, the Contractor shall bear the transportation costs from the asset to the Contractor's designated repair site and return. The returned supplies shall be warranted for the remainder of the warranty period.

(6) The Contractor shall establish and maintain a warranty item correction program to ensure that all Contractor responsible warranty defects are corrected in an expeditious manner. A Warranty Representative shall be designated by the Contractor in writing to the Contracting Officer and provided as necessary to:

Act as the principal point of contact between the Contractor and the Government during the warranty period.

Coordinate asset visits by subcontractor and vendor representatives and accomplishment of industrial work to correct warranty defects.

Conduct visits to the asset as required to gain familiarity with scope and nature of the warranty defects and ensure prompt and satisfactory completion of such items. The Warranty Representative shall be granted by the Government every reasonable opportunity to inspect the working of the asset but shall have no power to direct or control its operation.

Conduct liaison with the Government Warranty Officer to ensure that corrective actions are satisfactory and signed-off by the Government Warranty Officer.

Provide a monthly status report of all warranty items.

(7) If the Contractor has taken action to correct a deficiency and it is later demonstrated to the Contracting Officer that it was not the Contractor's obligation to correct the deficiency, the contract will be equitably adjusted.

(c) Remedies available to the Government.

(1) In the event of the identification of a defect, the Government may (i) require the Contractor to repair or replace the defective or non-conforming supplies, or (ii) require the Contractor to furnish such materials or parts and installation instructions as may be required to successfully accomplish the required correction or replacement. If the Contractor corrects the defect and it is later determined that the defect was not the responsibility of the Contractor, the contract price will be equitably adjusted.

(2) If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies, the Government may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce the contract price for other than cost reimbursable contract types in such amounts as may be equitable under the circumstances. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in price shall be a dispute within the meaning of the "DISPUTES" clause of this contract.

(3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. If the Contracting Officer does not require correction or replacement of defective or non-conforming supplies or the Contractor is not obligated to correct or replace supplies as indicated above in this paragraph, the Government shall be entitled to an equitable reduction in the contract price for other than cost reimbursable contract types.

(4) In cases where a defect may reasonably prevent an asset from performing a mission, the Contracting Officer/Warranty Officer will notify the Contractor promptly with a statement as to when performance is required so as to avoid or minimize mission impact. The Contractor shall correct the defect within whatever time period is required so that the mission is not impacted, or notify the Contracting Officer within two (2) working days of being notified of the required correction date that it cannot perform within the stated time. If the Contractor is not able to correct the deficiency to prevent mission impact, the Government may elect to correct the defect on its own and seek equitable adjustment of the contract price for other than cost reimbursable contract types from the Contractor. Prior to seeking equitable adjustment of the contract price, the Government will provide necessary invoices or proof of cost data to the Contractor.

(5) In matters of extreme urgency, where immediate and definite response and correction of defects is required to maintain safety, prevent imminent further deterioration or damage, or meet urgent operational requirements, the Government may take action to correct the deficiency on its own without prior notification to the Contractor and seek equitable adjustment of the contract price for other than cost reimbursable contract types. In these cases the Contracting Officer will notify the Contractor of the Government's action within three (3) business days. Prior to seeking equitable adjustment of the contact price; the Government will provide necessary invoices or proof of cost data to the Contractor.

(End of clause)

**I-11 Authorized Deviations in Clauses (APR 1984) (FAR 52.252-6)**

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 _____. [*insert regulation name*] (48 CFR _____) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

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## I.12 Contractor Employee Access (JUN 2006) (HSAR 3052.204-71)

a. Sensitive Information, as used in this Chapter, means any information, the loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended and any supplementary guidance officially communicated 06-01-2006 HSAR 52-5 by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

b. “Information Technology Resources” include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

c. Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All contractor employees

requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

d. The Contracting Officer may require the contractor to prohibit individuals from working on the contract if the government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

e. Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those contractor employees authorized access to sensitive information, the contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

f. The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

**I.12 Organizational Conflict of Interest (JUN 2006)(HSAR 3052.209-72)**

a. Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting _____[“contracting officer shall insert description here”]_____.

b. If any such conflict of interest is found to exist, the Contracting Officer may

(1) disqualify the offeror, or

(2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to avoid, neutralize, mitigate, or waive such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

c. Disclosure: The offeror hereby represents, to the best of its knowledge that:

(1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or ___

(2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included a mitigation plan in accordance with paragraph (d) of this provision.

d. Mitigation. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes the conflict can be avoided, neutralized, or mitigated, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision do not apply to the extent defined in the mitigation plan.

e. Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

f. Corporation Change. The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestures that may affect this provision.

g. Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

(End of provision)

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