

Commercial Items Acquisition Clauses Flow Downs



Subcontracts for Commercial Items

FAR Clause - 52.244-6 (JAN 2022)

- A. As defined in **FAR Part 2.101**, a commercial item is one that is customarily used for non-governmental purposes, and has been or will be sold, leased, or licensed (**or offered for sale, lease, or licensee**) to the general public. A Subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or subcontractor at any tier. Services such as installation, maintenance, repair, and training that are procured for support of a commercial item are also covered under this procedure.
- B. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.
- C. FAR 52.244-6 applies to this subcontract and the Commercial Items Acquisition Contract Clauses are Incorporated by Reference. The following clauses are applicable to this subcontract and should be inserted in any lower tier subcontracts as well.**

Reference	Title	Notes
52.203-13	Contractor Code of Business Ethics and Conduct	1
52.203-15	Whistleblower Protection Under the American Recovery and Reinvestment Act of 2009	2
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	5
52.204-23	Basic Safeguarding of Covered Contractor Information Systems	5
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232)	
52.219-8	Utilization of Small Business Concerns	3
52.222-21	Prohibition of Segregated Facilities	
52.222-26	Equal Opportunity	
52.222-35	Equal Opportunity for Veterans	
52.222-36	Equal Opportunity for Workers with Disabilities	
52.222-37	Employment Reports on Veterans	
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	

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52.222-50	Combating Trafficking in Persons	4
52.222-50 ALT I	Combating Trafficking in Persons Alternate I	4
52.222-55	Minimum Wages for Contractor Workers under Executive Order 14026	6
52.222-62	Paid Sick Leave Under Executive Order 13706	7
52.224-3	Privacy Training	8
52.224-3 ALT I	Privacy Training Alternate I	9
52.225-26	Contractors Performing Private Security Functions Outside the United States	
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	10
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	11

D. The DFARS clauses identified in the table below apply to commercial item subcontracts. The following clauses are are incorporated by reference into this subcontract and should be inserted in any lower tier subcontracts.

<u>Applies</u>	<u>Reference</u>	<u>Title</u>	<u>Notes</u>
<input type="checkbox"/>	252.204-7004	Antiterrorism Awareness Training for Contractors	
<input type="checkbox"/>	252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information	
<input type="checkbox"/>	252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	
<input type="checkbox"/>	252.204-7014	Limitations on the Use or Disclosure of Information by Litigation Support Contractors	
<input type="checkbox"/>	252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	
<input type="checkbox"/>	252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services	
<input type="checkbox"/>	252.204-7020	NIST SP 800-171 DoD Assessment Requirements	12
<input type="checkbox"/>	252.204-7021	Cybersecurity Maturity Model Certification Requirements	12
<input type="checkbox"/>	252.211-7003	Item Unique Identification and Valuation	
<input type="checkbox"/>	252.223-7008	Prohibition of Hexavalent Chromium	
<input type="checkbox"/>	252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	
<input type="checkbox"/>	252.225-7039	Defense Contractors Performing Private Security Functions Outside the United States	13

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<input type="checkbox"/>	252.225-7040	Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States	13
<input type="checkbox"/>	252.225-7043	Antiterrorism/Force Protection for Defense Contractors Outside the United State	14
<input type="checkbox"/>	252.225-7052	Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten	
<input type="checkbox"/>	252.227-7013	Rights in Technical Data—Noncommercial Items	15
<input type="checkbox"/>	252.227-7015	Technical Data—Commercial Items	15
<input type="checkbox"/>	252.227-7037	Validation of Restrictive Markings on Technical Data	15
<input type="checkbox"/>	252.232-7017	Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration	16
<input type="checkbox"/>	252.236-7013	Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers	
<input type="checkbox"/>	252.237-7010	Prohibition on Interrogation of Detainees by Contractor Personnel	
<input type="checkbox"/>	252.237-7019	Training for Contractor Personnel Interacting with Detainees	
<input type="checkbox"/>	252.239-7010	Cloud Computing Services	17
<input type="checkbox"/>	252.243-7999	Section 3610 Reimbursement (Deviation 2020-O0021)	18
<input type="checkbox"/>	252.244-7000	Subcontracts for Commercial Items	
<input type="checkbox"/>	252.246-7003	Notification of Potential Safety Issues	19
<input type="checkbox"/>	252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System	20
<input type="checkbox"/>	252.246-7008	Sources of Electronic Parts	21
<input type="checkbox"/>	252.247-7003	Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer	22
<input type="checkbox"/>	252.247-7023	Transportation of Supplies by Sea	23

Notes

1	Applicable if procurement is in excess of \$6,000,000 and period of performance of more than 120 days
2	Applicable if funded by American Recovery and Reinvestment Act
3	Must be flowed down when any subcontract to an other than small business exceeds \$750,000 (or \$1.5M for construction of any public facility)
4	Services performed outside of the United States in excess of \$550,000
5	Applicable if other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21 .
6	Applicable if required in accordance with paragraph (k) of FAR clause 52.222-55 .

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7	Applicable if required in accordance with paragraph (m) of FAR clause 52.222-62 .
8	Applicable if flow down is required in accordance with 52.224-3(f).
9	Applicable if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).
10	Applicable if required in accordance with paragraph (c) of FAR clause 52.232-40.
11	Applicable if required in accordance with paragraph (d) of FAR clause 52.247-64).
12	Applies to commercial items excluding COTS items.
13	When performed outside the United States in areas of 1) contingency operations; 2) combat operations, as designated by the Secretary of Defense; 3) other significant military operations designated by the Secretary of Defense; peace operations or 5) other military operations or exercises designated by the Combatant Commander.
14	When performing or traveling outside the US unless the subcontractor is a foreign government; a representative of a foreign government or; a foreign corporation wholly owned by a foreign government.
15	Whenever any technical data is developed in any part at Government expense, it is to be obtained from a subcontractor or supplier
16	Small Business Only
17	Cloud Computing subcontracts only
18	Applies to reimbursement of paid leave under the CARES Act
19	When 1) parts identified as critical safety items; 2) systems and subsystems, assemblies, and subassemblies integral to a system; or 3) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, and parts integral to a system.
20	Include only paragraphs (a) through (e) for electronic parts or assemblies containing electronic parts.
21	Include for electronic parts or assemblies containing electronic parts; unless the subcontractor is the original manufacturer.
22	All subcontracts with motor carriers, brokers, or freight forwarders
23	For supplies described in paragraph b(2) of the clause, flow down is required above the simplified acquisition threshold (SAT), the substance of the entire clause must be flowed down. Below the SAT, only paragraphs (2) through (e) must be flowed down to all tiers

E. While not required, the Subcontractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations including Mandatory Prime Contract Flow Downs.

The Subcontractor shall include the terms of this clause, including this paragraph (E), in lower tier subcontracts awarded under this subcontract. List additional clauses below or attach.