

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

252.235-7000 Indemnification Under 10 U.S.C. 2354—Fixed Price.

As prescribed in 235.070-3, use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—FIXED PRICE (DEC 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term “third persons” includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) *Notice.* The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7001 Indemnification Under 10 U.S.C. 2354—Cost Reimbursement.

As prescribed in 235.070-3, use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—COST REIMBURSEMENT (DEC 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term “third persons” includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) *Notice.* The Insurance—Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7002 Animal Welfare.

As prescribed in 235.071(a), use the following clause:

ANIMAL WELFARE (DEC 1991)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2316 and 9 CFR Subpart C, and Section 2.30, and furnish evidence of such registration to the Contracting Officer before beginning work under this contract.

(b) The Contractor shall acquire animals only from dealers licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR Subpart A, Sections 2.1 through 2.11, or from sources that are exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and regulations of the Department of Agriculture (see 7 U.S.C. 2131 *et. seq.* and 9 CFR Subchapter A, Parts 1 through 4).

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and removal of the Contractor's name from the list of contractors with approved Public Health Service Welfare Assurances.

(e) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), for the region in which its research facility is located. The location of the appropriate APHIS regional office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts involving research of live vertebrate animals.

(End of clause)

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

252.235-7003 Frequency Authorization.

As prescribed in 235.071(b), use the following clause:

FREQUENCY AUTHORIZATION (DEC 1991)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

ALTERNATE I (DEC 1991)

Substitute the following paragraph (c) for paragraph (c) of the basic clause if agency procedures authorize use of DD Form 1494, Application for Frequency Authorization:

(c) The contractor shall use DD Form 1494, Application for Frequency Authorization, to obtain radio frequency authorization.

252.235-7004 Option to Extend the Term of the Contract.

As prescribed in 235.015-71(i)(2), use the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT (DEC 1991)

If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), the Contracting Officer may—

(a) Add the additional period(s) to the contract as an option(s); and

(b) Exercise such option(s) by written notice of exercise at any time during the performance period or any extensions thereof.

(End of clause)

252.235-7005 Contractor-Acquired Property.

As prescribed in 235.015-71(i)(2), use the following clause:

CONTRACTOR-ACQUIRED PROPERTY (DEC 1991)

(a) *Definition.* “Property,” as used in this clause, means all nonexpendable tangible personal property (except material)—

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

(1) Described in FAR 45.101, including automatic data processing equipment as defined in FAR 31.001, and facilities as defined in FAR 45.301;

(2) Which is acquired with funds provided under this contract for the conduct of research;

(3) Which the Contractor has specifically identified in its proposal; and

(4) Which the Contracting Officer has authorized the Contractor to acquire.

(b) The Contracting Officer may accept the identification and description in the Contractor's proposal of property to be Contractor-acquired property as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts."

(c) Except for those items specifically identified in the contract as required by Block 27a of the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form), award of this contract constitutes the Contracting Officer's written consent to acquire property in the Contractor's proposal.

(d) The Contracting Officer will approve or disapprove subcontracts to acquire the items listed in Block 27a of the DD Form 2222 after the award of any contract resulting from this solicitation.

(End of clause)

252.235-7006 Title to Contractor-Acquired Property.

As prescribed in 235.015-71(i)(2), use the following clause:

TITLE TO CONTRACTOR-ACQUIRED PROPERTY (DEC 1991)

(a) *Definition.* "Property," as used in this clause, has the meaning given in the Contractor-Acquired Property clause of this contract.

(b) Title shall vest in the Contractor without further obligation when the property—

(1) Has an acquisition cost of \$1,000 or more;

(2) Was specifically identified in the Contractor's proposal; and

(3) Is property other than that property for which a determination of title is deferred. Property for which the determination of title is deferred shall be identified in Block 27b of the DD Form 2222, Research Contract (SFRC)/Modification, Short Form.

(c) Title in all property which—

(1) Has an acquisition cost of \$1,000 or more; and

(2) Was not specifically identified in the Contractor's proposal; or

(3) Is property for which a determination of title is deferred, may vest—

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

(i) In the Government;

(ii) In the Contractor; or

(iii) In the Contractor, subject to the right of the Government to direct transfer of the title back to the Government or third parties. The Government may exercise this right at any time up to and including the twelfth month after completion or termination of the contract. The Government at any time may remove an item of property from this category, give up the right to direct transfer of the title back to the Government or third parties, and transfer title to the Contractor.

(d) Transfer of title back to the Government or third parties shall not be the basis for any claim by the Contractor. The Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts) clause and its Alternate I of this contract apply to any changes in property.

(e) Property acquired with funds made available under this contract shall be considered Government property subject to the Government Property clause until title to such property vests in the Contractor without right of the Government to direct transfer of the title back to the Government or third parties.

(f) Within 45 days following the end of the calendar year or the Contractor's fiscal year, the Contractor shall furnish the Contracting Officer a list of all property with an acquisition cost of \$1,000 or more which the Contractor acquired under this contract during that year and to which title has not vested in the Contractor.

(End of clause)

252.235-7007 Advance Payments.

As prescribed in 235.015-71(i)(2), use the following clause:

ADVANCE PAYMENTS (DEC 1991)

The advance payment pool agreement between the Contractor and one or more military departments which is in effect as of the date of, and applies to, this contract shall govern advance payments made under this contract. If such an agreement is not in effect as of the date of this contract, the Allowable Cost and Payment clause of this contract shall govern payments to the Contractor.

(End of clause)

252.235-7008 Inspection and Acceptance.

As prescribed in 235.015-71(i)(2), use the following clause:

INSPECTION AND ACCEPTANCE (DEC 1991)

The Scientific Program Officer designated in Block 11 on the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form) of this contract shall conduct inspection and acceptance of the final delivery. The Scientific Program Officer shall have at least 30 days after contractual delivery for acceptance.

(End of clause)

Defense Federal Acquisition Regulation Supplement

Part 252-Solicitation Provisions and Contract Clauses

252.235-7009 Restriction on Printing.

As prescribed in 235.015-71(i)(2), use the following clause:

RESTRICTION ON PRINTING (DEC 1991)

The Contractor is authorized to reproduce reports, data, or other written materials, if required, provided the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of these quantities.

(End of clause)

252.235-7010 Acknowledgment of Support and Disclaimer.

As prescribed in 235.071(c), use the following clause:

ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

252.235-7011 Final Scientific or Technical Report.

As prescribed in 235.071(d), use the following clause:

FINAL SCIENTIFIC OR TECHNICAL REPORT (MAY 1995)

The Contractor shall submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center (DTIC), Attn: DTIC-OC, Cameron Station, Alexandria, VA 22304-6145. The Contractor shall include a completed Standard Form 298, Report Documentation Page, with each copy of the report. For submission of reports in other than paper copy, contact the Defense Technical Information Center, Attn: DTIC-OC, Cameron Station, Alexandria, VA 22304-6145.

(End of clause)