Federal Acquisition Regulations (FAR) Information

What is the FAR?

In its simplest form the FAR is a principal set of rules by which executive agencies of the United States Federal Government acquire goods and services. In essence, the FAR is how the Government ensures their purchasing procedures and awards are standardized and conducted in a fair and impartial manner.

The FAR is divided into subchapters, parts, subparts, sections and subsections. The illustration below shows how to determine the breakdown of a clause number.

FAR requirements can be listed throughout a Federal award or solicitation in either full text or in table form. Regardless of the format that they are listed in, their full text is deemed incorporated into the award. The majority of the required FAR clauses pertinent to your award will be found in Section I when your award uses the Uniform Contracting Format (FAR 15.204-1).

How to Read the FAR

Each clause contains a different set of rules and requirements that the contractor must follow. To understand what is required under each clause you will need to do an online search for the clause number. There are several sites that contain the full clause text; however, the preferred site to use is the Government Acquisition Website. On this website you will be able to search by the full clause number or by individual part. Once you search for a clause you will need to read the clause and then determine if it is applicable to your solicitation or award. The example below shows how to search for a clause and determine if it is applicable.

This is what comes up on the Government Acquisition Website when we search for FAR clause 52.202-1:
You will need to read the clause in its entirety and pay close attention to the items shown in red circles above. These items are critical in understanding the requirements of the clause as well as understanding when the clause is applicable. On the Government Acquisition Website the items circled in red are clickable links. For this clause we would need to click on the hyperlink 2.201 to understand when this clause is required:

### 2.201 Contract clause.

Insert the clause at 52.202-1, Definitions, in solicitations and contracts that exceed the simplified acquisition threshold.

In this instance the clause is only required when the solicitation or contract will exceed the simplified acquisition threshold (SAT) \(^1\). It is important to understand that if after reading the applicability of the clause you determine that it doesn’t apply to your specific effort then the clause becomes self-deleting, there is no need to request to remove it. In this example if your award is below the current SAT level of $150,000\(^1\) then this clause would not apply and the contract would be read as if the clause weren’t there. If your award was over $150,000 however you would then need to look at the clause in additional detail. It is important to review all of the cross-references made within a FAR clause to ensure UCF is able to comply with all of the requirements.

In some cases, FAR clauses contain Alternate sections that can be used in place of the original version of the clause. Pay close attention to these clauses to verify that the correct Alternate is being referenced.

\(^1\)The current SAT can be found within FAR Part 2.101. As of 26 April 2016 the SAT is $150,000.
Additional Information

NO ONE BUT THE FEDERAL GOVERNMENT CONTRACTING OFFICER CAN AUTHORIZE A CHANGE TO THE LANGUAGE OF A FAR CLAUSE. This means that we cannot ask for, or accept changes to, any clause language regardless of if it is to a prime award or subaward flow-down. In the event we do need to request a change to the language or an exception to a clause we need to get written approval from the Government Contracting Officer to do so.

After reading through each clause you may determine that we are able to request exceptions to some of the requirements (e.g. Rights in Data, Patent Indemnity, Security Requirements, Disclosure of Information, etc.). The Government Contracting Officer is not required to approve requested exceptions so do not operate under the assumption that all requests are approved.

After the award has been reviewed, approved, and executed make sure to let the Principal Investigator (PI) and their department know any requirements they must live up to (e.g. printing double sided, using recycled paper, etc.)

All of the clauses included in a Prime award should be flowed down to all subcontractors and consultants on an effort. Even though not all of the clauses apply, the ones that don’t will become self-deleting. Despite the fact that non-applicable clauses become self-deleting some companies will still request these clauses be deleted. In this instance you will need to review the clauses individually to determine if they are required to be flowed down and then remove the non-applicable ones from the subaward. If a clause is required to be flowed-down it will have a sentence at the very end of the clause stating when it is required to be flowed-down. The example below shows that this specific clause is required to be flowed-down to every subcontractor that exceeds the SAT.

52.203-6 Restrictions on Subcontractor Sales to the Government.
As prescribed in 3.503-2, insert the following clause:

**Restrictions on Subcontractor Sales to the Government (Sept 2006)**

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

(End of clause)
Individual agencies have their own supplements to the FAR such as the Defense Federal Acquisition Regulation Supplement (DFARS), Army FAR (AFAR), Air Force FAR (AFFAR), Department of Energy Acquisition Regulations (DEAR), Naval Air Systems Command (NAVAIR), and many others.
Federal Acquisition Regulations (FAR) – Exercise #1

UCF’s Dr. Martino received an RFP from Lockheed Martin for a fixed price award with an estimated value at $356,000 for a 2 year effort to study adverse physical health effects of electronic radiation on ankle tracking bracelets and provide a developmental proto-type. The subcontract to UCF from the prime will be a small piece of the prime’s larger federal contract with the Department of Justice. UCF plans on issuing a subcontract to Bisco Enterprises, a California manufacturer, to provide some of the commercial electronics which will need to be slightly modified for the project. The minor product modifications will not alter the performance or the physical appearance or the price of Bisco’s catalog product.

The prime has included the Drug Free Workplace clause 52.223-6 in UCFs contract by reference.

1. Review the clause and determine if it is applicable to UCF.
2. Provide justification as to why you feel it does or does not apply.
3. Should this clause flow-down to Bisco Enterprises?

<table>
<thead>
<tr>
<th>Title of Clause</th>
<th>Far Ref.</th>
<th>Applicable?</th>
<th>Why?</th>
<th>Flow-down requirement?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Free Workplace</td>
<td>52.223-6</td>
<td>☒ No</td>
<td>Above SAT, Non-Commercial, but not a required flow-down. Possible negotiate with prime. Not a required flow down to Bisco. Even if it was, Bisco’s product could be could be exempt to due small size of subcontract below SAT and commercial product. Only commercial clauses are required in commercial contract.</td>
<td>☒ Yes ☒ No</td>
</tr>
</tbody>
</table>
Drug-Free Workplace 52.223-6

23.505 -- Contract Clause.
Except as provided in 23.501, insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts.

23.501 -- Applicability.
This subpart applies to all contracts including contracts with 8(a) contractors under FAR Subpart 19.8 and modifications that require a justification and approval (see Subpart 6.3) except contracts--
(a) At or below the simplified acquisition threshold; however, the requirements of this subpart shall apply to contracts of any value awarded to an individual;
(b) For the acquisition of commercial items (see Part 12);
(c) Performed outside of the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;
(d) By law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency’s undercover operations; or
(e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

2.101 Definitions
“Commercial item” means—
(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—
   (i) Has been sold, leased, or licensed to the general public; or
   (ii) Has been offered for sale, lease, or license to the general public;
(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—
   (i) Modifications of a type customarily available in the commercial marketplace; or
   (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;
(5) Installation services, maintenance services, repair services, training services, and other services if—
   (i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless
       of whether such services are provided by the same source or at the same time as the item; and
   (ii) The source of such services provides similar services contemporaneously to the general public under terms and
       conditions similar to those offered to the Federal Government;
(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on
    established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard
    commercial terms and conditions. For purposes of these services—
    (i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the
        manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales
        currently, or were last, made to a significant number of buyers constituting the general public; and
    (ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers
        free to bargain and that can be substantiated through competition or from sources independent of the offerors.
(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the
    fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a
    contractor; or
(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and
    sold in substantial quantities, on a competitive basis, to multiple State and local governments.

52.223-6 Drug-Free Workplace 52.233-6

As prescribed in 23.505, insert the following clause:

Drug-Free Workplace (May 2001)

(a) Definitions. As used in this clause --

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21
U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 -- 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body
charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing,
possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract
where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession,
or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract.
“Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal
impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall -- within 30 days after award (unless a longer period is agreed to in writing for
contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration -
(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a
controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for
violations of such prohibition;
(2) Establish an ongoing drug-free awareness program to inform such employees about --

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor’s policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will --

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

(End of Clause)

52.244-6 Subcontracts for Commercial Items.

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2017)

(a) Definitions. As used in this clause—
“Commercial item” and “commercially available off-the-shelf item” have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor 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)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.


(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), 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.

(v) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vii) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).


(x) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.


(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xiii) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xiv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xv) (A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).


(xvii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xviii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.
Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.
This subpart prescribes the policies limiting the contract clauses a contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with 41 U.S.C. 3307.

44.401 Applicability.
This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term “subcontract” has the same meaning as defined in Part 12.

44.402 Policy requirements.
(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:
   (1) Be required to incorporate commercial items or nondevelopmental items as components of items delivered to the Government; and
   (2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—
      (i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or
      (ii) Determined to be consistent with customary commercial practice for the item being acquired.
(b) The clause at 52.244-6, Subcontracts for Commercial Items, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244-6 are required to be in subcontracts for commercial items or commercial components.
(c) Agencies may supplement the clause at 52.244-6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.
The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.
Federal Acquisition Regulations (FAR) – Exercise #2

NASA has issued a 3 year, $3M fully funded cost reimbursable contract to UCF to study and provide a technical publication on the expected probability of rare earth minerals on specific asteroids and other space bodies. The Prime has included an option 1 in the contract for a follow-on phase 1 with an anticipated value of $2M. UCF has subcontracted a portion of the effort to researchers at the University of South Florida.

NASA has included the Limitation of Funds clause 52.232-22 and the Allowable Cost and Payment Clause 52.216-7 in UCFs contract.

1. Review the clause and determine if it is applicable to UCF.
2. Provide justification as to why you feel it does or does not apply.
3. Should this clause flow-down to USF?

<table>
<thead>
<tr>
<th>Title of Clause</th>
<th>Far Ref.</th>
<th>Applicable?</th>
<th>Why?</th>
<th>Flow-down requirement?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of Funds</td>
<td>52.232-22</td>
<td>☐ Yes</td>
<td>Notwithstanding the option, Limitation of Cost should apply to Fully Funding Cost projects. CO will want to substitute Limitation of Costs in Contract.</td>
<td>☑ Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>X No</td>
<td>However, one of this clauses should flow down to subcontract to protect Prime’s reporting requirements.</td>
<td>☑ No</td>
</tr>
<tr>
<td>Allowable Cost and Payment</td>
<td>52.216-7</td>
<td>X Yes</td>
<td>Should include Alt II for Educational institution.</td>
<td>☑ Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ No</td>
<td>Not a required flowdown, but if your prime contract is cost reimbursement and you issue cost reimbursement subcontracts, put your subcontractors under the same constraints you’re under for progress payments.</td>
<td>☑ No</td>
</tr>
</tbody>
</table>
Limitation of Funds FAR 52.232-22

32.706-2 Clauses for limitation of cost or funds.
(a) The contracting officer shall insert the clause at 52.232-20, Limitation of Cost, in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, whether or not the contract provides for payment of a fee.
(b) The contracting officer shall insert the clause at 52.232-22, Limitation of Funds, in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated.

52.232-22 Limitation of Funds.

As prescribed in 32.706-2(b), insert the following clause. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. “Task Order” or other appropriate designation may be substituted for “Schedule” wherever that word appears in the clause:

LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government’s share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government’s and the Contractor’s share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government’s share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor’s corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or otherwise agreed upon date, upon the Contractor’s written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—
1. The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and
2. The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of—
   i. The amount then allotted to the contract by the Government or;
(ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor’s corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor’s corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of—

1. The amount previously allotted by the Government or;
2. If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor’s corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

(End of clause)

**Allowable Cost and Payment FAR 52.216-17**


(a)(1) The contracting officer shall insert the clause at 52.216-7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract or a time-and-materials contract (other than a contract for a commercial item) is contemplated. If the contract is a time-and-materials contract, the clause at 52.216-7 applies in conjunction with the clause at 52.232-7, but only to the portion of the contract that provides for reimbursement of materials (as defined in the clause at 52.232-7) at actual cost. Further, the clause at 52.216-7 does not apply to labor-hour contracts.

(2) If the contract is a construction contract and contains the clause at 52.232-27, Prompt Payment for Construction Contracts, the contracting officer shall use the clause at 52.216-7 with its Alternate I.

(3) If the contract is with an educational institution, the contracting officer shall use the clause at 52.216-7 with its Alternate II.

(4) If the contract is with a State or local government, the contracting officer shall use the clause at 52.216-7 with its Alternate III.

(5) If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, the contracting officer shall use the clause at 52.216-7 with its Alternate IV.
52.216-7 Allowable Cost and Payment.
   As prescribed in 16.307(a), insert the following clause:

ALLOWABLE COST AND PAYMENT (JUN 2013)

(a) Invoicing.
   (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.
   (2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.
   (3) The designated payment office will make interim payments for contract financing on the _________ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert “30th”] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.
   (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term “costs” includes only—
      (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
      (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—
         (A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—
            (1) In accordance with the terms and conditions of a subcontract or invoice; and
            (2) Ordinarily within 30 days of the submission of the Contractor’s payment request to the Government;
         (B) Materials issued from the Contractor’s inventory and placed in the production process for use on the contract;
         (C) Direct labor;
         (D) Direct travel;
         (E) Other direct in-house costs; and
         (F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
      (iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.
   (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—
      (i) The Contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and
      (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor’s indirect costs for payment purposes).
   (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.
(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of
services or furnishing of materials at the Contractor’s expense or at no cost to the Government shall be disregarded for purposes of
cost-reimbursement under this clause.

(c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates.
(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the
Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal
agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for
exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Office. The
Contractor shall support its proposal with adequate supporting data.
(ii) The proposed rates shall be based on the Contractor’s actual cost experience for that period. The appropriate
Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of
the Contractor’s proposal.
(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant
Federal agency official:
(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.
(B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as
identified in accounting records (Chart of Accounts).
(C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in
accounting records (Chart of Accounts) for each final indirect cost pool.
(D) Occupancy expenses (intermediate indirect cost pool). Schedule of claimed expenses by element of cost as identified
in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.
(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.
(F) Facilities capital cost of money factors computation.
(G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.
(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a
subsidiary schedule of Government participation percentages in each of the allocation base amounts.
(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
(J) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is the prime or
upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal
year; and the subcontractor name, address, and point of contact information).
(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates,
hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).
(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of
performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).
(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required
during the audit process:
(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.
(B) General organizational information and limitation on allowability of compensation for certain contractor personnel.
See 31.205-6(b). Additional salary reference information is available at
http://www.whitehouse.gov/omb/procurement_index_exec_comp/.
(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year’s submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year’s submission).

(F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and
(2) May be prospectively or retroactively revised by mutual agreement, at either party’s request, to prevent substantial overpayment or underpayment.

(f) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor’s invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor’s compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor’s indemnification of the Government against patent liability.

Alternate I (Feb 1997). As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor’s subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled “Prompt Payment for Construction Contracts.” Payments shall be made by cash, check, or other form of payment to the Contractor’s subcontractors under similar cost standards.

Alternate II (Aug 2012). As prescribed in 16.307(a)(3), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.3 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative

Commented [JD2]: 31.303 Requirements.

(a) Contracts that refer to this subpart for determining allowable costs under contracts with educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.
of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

**Alternate III** (Aug 2012). As prescribed in 16.307(a)(4), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.6 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

**Alternate IV** (Aug 2012). As prescribed in 16.307(a)(5), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(a)(1) The Government will make payments to the Contractor when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Contracting Officer in accordance with subpart 31.7 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.