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**CODSIA Case 2018-005**

October 28, 2018

Defense Acquisitions Regulations Systems  
ATTN: Ms. Amy G. Williams  
OUSD (A&S) DPAP/DARS  
Room 3B941  
3060 Defense Pentagon  
Washington, DC 20301-3060

**Re: DFARS Case 2017-D010, Defense Federal Acquisition Regulation Supplement:  
Inapplicability of Certain Laws and Regulations to Commercial Items**

Dear Ms. Williams:

On behalf of the members of the Council of Defense and Space Industry Associations (CODSIA),<sup>1</sup> we appreciate the opportunity to provide comments on the proposed rule on the Inapplicability of Certain Laws and Regulations to Commercial Items published on Friday, June 29, 2018 at page 30646 of the Federal Register and to encourage a shift in how the Department of Defense (DoD) purchases commercial items.

**General Comments**

For years, industry has advocated for reforms to the acquisition of commercial items as the number of contract clauses that have been required for the procurement of these goods and services has dramatically increased. With approximately 200 clauses either required or optional for the purchase of commercial items, contracting officers have had to navigate an ever-expanding list of clauses to purchase items that are readily available outside of government acquisitions. As such, we applaud the long-awaited release of this proposed rule as it begins to address how the purchase of commercial items can be simplified and urge its immediate adoption.

At this time, however, the proposed draft does not indicate how the DAR Council plans to integrate several key and ongoing changes to commercial items procurements. For instance, this rule should recognize and integrate Section 837 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, which amended the underlying statutory authorization for the proposed rule and expanded the scope to include clauses that were implemented since October 13, 1994. Accelerating the rulemaking process so that the additional clauses that are deemed inapplicable

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<sup>1</sup> CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of seven associations – Aerospace Industries Association (AIA), American Council of Engineering Companies (ACEC), Associated General Contractors (AGC), Information Technology Alliance for Public Sector (ITAPS), National Defense Industrial Association (NDIA), Professional Services Council (PSC), and U.S. Chamber of Commerce. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

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will be removed would avoid unnecessary confusion and save the Council and industry time in drafting and reviewing a separate DFARS Case.

Furthermore, there continues to be a wide-range of policy conversations that could impact whether clauses are deemed inapplicable. For instance, the Section 809 Panel is still undergoing its review of contract clauses and will release its final report in January 2019. CODSIA believes the panel's recommendations regarding whether a clause should be inapplicable to the purchase of commercial products will be helpful and instructive as the DAR Council continues its evaluation of commercial item clauses, as well as the new statutory authority provided in the FY19 NDAA. Moreover, as there are still changes that have yet to be made to the Federal Acquisition Regulation (FAR), industry would like to understand when action will be taken to address the outstanding FAR clauses. We are concerned that there will be an exclusion of applicable statutes from the FAR that are applicable to the DFARS or vice versa.

Another essential element regarding inapplicability of clauses is the ongoing discussion of what current requirements are necessary for supply chain security and assurance. There has been a renewed emphasis on the importance of securing supply chains, not only from DOD, but Congress, as well. Industry has made great investments to create secure supply chains, not only for items purchased by the federal government, but also those purchased commercially. By imposing government-unique terms and conditions for commercial items for supply chain security and assurance, the government could burden innovative tech companies to the point where they will choose not to offer versions of their innovations tailored to DoD's security specifications. Thus, as DoD continues to evaluate supply chain security and assurance, industry believes it should also address how any conflict between these requirements and the commercial item acquisition practices will be resolved.

Due to the wide-ranging changes to commercial items contracting being undertaken, CODSIA recommends a methodical, holistic approach to determining which clauses should be deemed inapplicable to the purchase of commercial products is in the best interest for industry and DoD. Employing this methodology would result in the least amount of confusion and ensure consistent application with regards to the implementation of these changes.

**Specific Comments**

**Section 874:** The proposed rule does not fully implement Section 874. Section 874 of the FY17 NDAA requires DoD to revise the DFARS to ensure that it does not include contract clauses for commercial items, subcontracts for commercial items or contracts for commercially available off-the-shelf (COTS) items unless they are required to implement law or executive orders or determined to be consistent with commercial practice. It also requires DoD to prohibit the 'flow-down' of contract clauses to subcontracts for all commercial items unless required to implement law or executive order. To aid in this process, Section 874 instructs DoD to insert lists into the DFARS of contract requirements and laws that are inapplicable to commercial items contracts, contracts for COTS items, and subcontracts for commercial items, with certain exceptions (i.e.

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requirements that provide criminal or civil penalties, pertain to certain domestic sourcing requirements, or specifically refer to 10 U.S.C. 2375 and designate the law or requirement applicable to commercial items).

Section 874 includes separate subsections on commercial item contracts, subcontracts for commercial items, and contracts for COTS items, with paragraphs within each to provide tailored requirements. For commercial items, laws included in the list do not apply. Additionally, any provision of law or contract requirement enacted after January 1, 2015 shall be placed on the list, absent an Under Secretary of Defense for Acquisition and Sustainment (USD[A&S]) written determination that it is not in DoD's best interest to make the law or contract requirement inapplicable to commercial item contracts. For COTS items and subcontracts for commercial items, laws and contract requirements on the list do not apply, unless a USD(A&S) determination is made.

However, in the "Discussion and Analysis" portion of the proposed rule, DoD states the following:

"10 U.S.C. 2375(b)(2) *limits the required review* of applicability of provisions of law and contract clauses to prime contracts for commercial items to those provisions of law and contract clauses enacted after January 1, 2015. Although the subsequent paragraphs (c) and (d) relating to applicability of provisions of law and contract clauses to subcontracts for commercial items and contracts for COTS items are in all other regards parallel, the date of January 1, 2015 is not repeated in the subsequent paragraphs. DoD has interpreted the date as equally applicable to all three paragraphs, because the three paragraphs are closely inter-related."

This statement erroneously limits the scope of the proposed rule and is incorrect for the following reasons:

- (1) DoD's approach does not fully implement the requirements of Section 874: As described above, the use of the date January 1, 2015 does not serve as a cut-off date for the list, but rather, an additional assumption for recently-enacted laws and regulations. This is consistent with other provisions from the Senate version of the bill that exempted DoD procurements and all COTS contracts from certain recent Executive Orders.
- (2) DoD's determination to apply the January 1, 2015 cut-off date to subparagraphs (c) and (d) is incorrect. Even if one were to accept the DoD's application of the January 1, 2015 date for commercial item contracts, there is no rational explanation for applying that approach to subparagraphs (c) and (d) on subcontracts for commercial items and COTS items, respectively.
- (3) DoD's determination does not consider Congressional intent embodied in accompanying Senate report language which states,

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“The committee is concerned by the growing number of government-unique clauses that are now required for FAR Part 12 commercial contracts. By industry estimates these contracts have grown since the mid-1990s from 13 to 63, and in some cases over 80, government-unique contract clauses today... The Committee intends that this provision be used by the Department of Defense to reduce unnecessary requirements on contractors providing commercial items that are identified in the report required by Section 854 of the National Defense Authorization Act for Fiscal Year 20[1]6 (Public Law 1[14]-[92].”

This language makes it clear that the Committee intended for DoD to perform a comprehensive review of all defense-unique requirements for commercial contracts, utilizing information gathered in the FY16 NDAA Section 854 report delivered to Congress in June 2016 that documents 85 contract requirements with effective dates reaching as far back as 1995. Nothing in the statute or in contemporaneous report language indicates that Congress intended to limit this law’s applicability to a cut-off date of January 1, 2015.

The attached Excel spreadsheet includes 145 FAR and DFARS clauses, all of which are available for commercial item procurements. A simple sorting of the data shows (as shown in the figure below) that, within the last eight years, 114 new contract clauses have been added that are required for commercial contracts. This is significantly more than the total number of new clauses added in the entire previous quarter-century; note that post FASA and FARA (Aug 1996) there were a total of four FAR clauses and one DFARS clause mandated for commercial item procurements, with 12 optional FAR provisions available.

Commercial Contract Clauses	Timeframe				Total
	1984-1991	1992-2000	2001-2009	2009-2017	
Regulatory Requirement	4	2	7	79	92
Legislative Requirement	2	4	9	38	53
<b>Total</b>	<b>6</b>	<b>6</b>	<b>16</b>	<b>117</b>	<b>145</b>

Clauses recommended as “N/A” in Column K of the attachment may be applied to commercial procurements despite not being expressly authorized by law. While the substance of some of the clauses may have originated from statute, National Defense Authorization Act, or executive order, neither Congress nor the Executive Branch explicitly mandated that the law apply to commercial or COTS items.

**Recommendation:** The Defense Acquisition Regulatory (DAR) Council should consider the FAR and DFARS clauses on the attached list as strong candidates for the mandatory list of clauses inapplicable to contracts and subcontracts for commercial items. Since the DAR Council’s

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incorrect interpretation of statute has limited the public's ability to comment on determinations for clauses enacted before 2015, and because we do not wish to see the rulemaking further delayed, we recommend that the DAR Council proceed with a DFARS rule in DFARS Case 2017-D010 that reflects the intent of Congress. Any determinations made pursuant to 10 U.S.C. 2375(b)(2), 10 U.S.C. 2375(c)(2), or 10 U.S.C. 2375(d)(2), in the final rule should be made solely by the USD(A&S) or a Presidentially-appointed, Senate-confirmed designee, to ensure the appropriate accountability to the intent of Congress, as noted in paragraph "b" of Section 874.

**Comment:** Define the scope of agreements excluded from "subcontracts" under Section 874 and make clear that flowdowns to such excluded supplier agreements is prohibited. Congressional intent was to declare that a **seller's** agreement for the **purchase** of commodities intended for use in performance of multiple **[sales] contracts** with the DoD and other parties, and that are not identifiable to any particular **[prime] contract** is not a "subcontract" under a Government prime contract, and is therefore exempt from flowdowns, except as otherwise expressly authorized by law. Whether the seller/purchaser of the commodities is a government prime "contractor" or a lower tier supplier should be irrelevant: the clear purpose of this legislation was to provide relief from government flow downs to the commercial supply chain. Moreover, Section 874 does not authorize DoD to make government interest determinations for flowdowns to suppliers operating under such excluded supplier agreements. Instead, DoD is only authorized to make such government interest determinations in considering whether a provision of law should be applied and flowed down to "contracts" or "subcontracts" for the acquisition of commercial items. Contrary to the proposed rule, there is no statutory basis for the flowdown of DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, and 252.246-7008, Sources of Electronic Parts, to contractual instruments other than subcontracts (such as excluded supplier agreements).

**Recommendation:** We recommend that the DAR Council clarify that the exclusion from the proposed rule's definition of "subcontract," within the meaning of Section 874, applies to contractors at all levels of the supply chain, and removes flowdowns to excluded supplier agreements. We recommend that the proposed definition for subcontract be modified throughout the proposed rule as follows:

"The term 'subcontract' does not include agreements entered into by contractors at any level of the supply chain for the supply of commodities that are intended for use in the performance of multiple contracts with DoD and other parties and are not identifiable to any particular contract."

The recommended clarification is necessary to ensure the exception covers sellers at any tier in the supply chain (not just the prime contractor), and to limit the exception to supplies used in the performance of both DoD and non-DoD contracts.

**Comment:** None of the "best interest" determinations made in this rule adequately consider existing standard commercial practice. DFARS clauses are often published in the *Federal*

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*Register* as applicable to commercial procurements without the DAR Council disclosing sufficient supporting rationale that led to “best interest” and “consistency” conclusions. Little explanation is provided in most cases beyond a statement that the costs of complying with the new requirement have been estimated to be non-consequential.

Where the DAR Council has attempted to quantify the burden of new requirements on the commercial supply chain, commercial contractors and subcontractors the estimates have been vastly understated. One example is Combating Trafficking in Persons (FAR 52.222-50), for which contractors have, so far, estimated the costs of implementation and compliance at millions of dollars, well above the amount estimated by the DoD. Furthermore, many suppliers of commercial items have found that flow downs are inconsistent with commercial practices, resulting in excessive costs for implementation by the commercial supply chain.

**Recommendations:** A more collaborative approach to imposing new requirements on commercial contractors and their suppliers would enable the DAR Council to obtain a more realistic and informed understanding into the potential impact of new requirements on the commercial supply chain. After all, the commercial supply chain is in the best position to understand the challenges of their commercial businesses as well as the commercial market, which may not be clear to government analysts.

Furthermore, in conjunction with the publication of proposed clauses or requirements applicable to the commercial supply chain, DoD should publish in a government-wide information portal accessible by the public, its rationale for concluding that it is in the Government’s best interest to flow down clauses to commercial procurements, and that the clauses are consistent with commercial practices. DoD’s analysis should consider the barriers to accessing commercial items, and the potential increased costs for such items resulting from the implementation of new and revised requirements at the prime, subcontract, and sub-tier levels. If the implementation of any clause identified in the attachment did not comply with the written determination process, the clause should be added to the Section 874 list, pending a written determination consistent with the recommended process.

**Define “Commodities”:** The final rule should include a definition for “commodities” to appropriately reflect Congressional intent. Various definitions available in recognized dictionary sources for “commodities” have a few important descriptions in common. They describe a supply (not a service) that is fungible, where “one unit may be exchanged or substituted for another unit of equal part to discharge an obligation.” (American Heritage Dictionary, 2nd Ed.) Is the item -- by nature, usage of trade, or agreement -- “fungible”? Is it equivalent to other like items or units, regardless of brand or producer, where price is often the deciding factor?

Determining whether a commodity is fungible is not always simple. On one hand, even a commodity like electricity can be differentiated, e.g., by source--hydro, coal, solar. On the other hand, even complex and/or large, high priced, items should be treated as a commodity when they are simply components used in a process that results in the production of large numbers of

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commercial items sold to multiple customers (e.g., complex components and subsystems associated with commercial airplanes). To carry out the intent of the statute and to be truly useful, the DFARS definition should encompass both ends of the spectrum. If the definition were limited to items traded on the Commodities Exchange or to items like nuts and bolts, we believe that would undermine Congressional intent.

Section 874 of the FY2017 NDAA revised 10 U.S.C 2375, subparagraph (b)(2), to define the term “subcontract”. The Congressional intent was to provide relief from flow-down of the DFARS clauses to the commercial supply chain, thereby enabling the mandatory requirement to incorporate commercial items throughout the supply chain. A broad definition of “commodities” would be consistent with Congressional intent, and, equally important, be consistent with commercial practices regarding supply chain management. The price of an item should not be a factor in determining whether an item is a commodity that should be exempt from DFARS flowdown; the determining factor should be whether the item is purchased by the manufacturer/seller in support of on-going production rates of the commercial item, or whether it is purchased solely and uniquely for the performance of a prime contract with the Government (i.e., the purchase does not meet the criteria of being “not identifiable to any particular contract”).

**Recommendation:** The DFARS provisions implementing Section 874 should include the following definition for “commodity” in FAR 2.101 and/or DFARS 202.101:

“A ‘commodity’ is any fungible commercial item purchased by a party for use in the manufacture of, or integration into, a product. “

The DAR Council should then issue the following guidance: a) the price of the items being procured, either individually or in total, is not a consideration when determining whether an item is a commodity; and b) commodities may include commercial items that are “of a type” sold or offered for sale in the commercial marketplace, as well as those with customer modifications available in the market place, or that include minor modifications made for government purposes. Commodities may be purchased for use on noncommercial contracts, in which the same practices should apply.

**Correct Section F Preamble:** The preamble for Section F, Subcontracts, states that the definition at 10 U.S.C. 2375 is similar to FAR Part 44.101. This is inaccurate, the definition at FAR Part 44.101 is very broad and often construed to include all purchases to support a prime contract. The definition at 10 U.S.C. 2375 is much more specific to exclude terms that are used on multiple contracts and not identifiable to a particular contract.

**Recommendation:** List the definition of “subcontract” under DFARS Part 244.101, rather than DFARS Part 212.001. Since the definition applies to all acquisition, not limited to Part 12, this would preclude the need to restate the definition of “subcontract” under every DFARS clause that requires flowdown to subcontractors.

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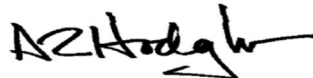
**Conclusion:** CODSIA is disappointed that the DAR Council did not fully apply the intent of Congress expressed in Section 874 to lower the significant barriers for DoD and its contractors in procuring commercial items. Section 874 as written, and intended, strongly aligns with DoD's long-standing preference for commercial items, efforts by the DoD Regulatory Reform Task Force to remove burdensome regulations (i.e. government-unique practices and requirements that do not align with standard commercial practice), and reach DoD's regulatory cost cap of \$1.013 billion in FY18. When this rule is properly implemented, we believe it will provide DoD an excellent opportunity to accomplish each of those objectives.

Industry strongly supports efforts by DoD to reduce the regulatory clauses applicable to the purchase of commercial items and looks forward to working with the Department to address how those efforts can be combined to create a more cohesive approach. Should you have any questions regarding these comments, please contact Trey Hodgkins, who serves as our project officer for this case. He can be reached at [thodgkins@itic.org](mailto:thodgkins@itic.org) or 202-616-5758.

Sincerely,



John Luddy  
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Officer  
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Encl as



Copy of List of Inapplicable Commercial Item FAR and DFAR Contract Clauses 04102017.xlsx

Clause Number	Time Frame	Clause Date	TITLE	(R=Required, AO=As Appropriate) (N/A = Not Applicable, A=Applicable)	Required by law	Citation	52.244-6 Required	52.212-5 Required	52.212-5 Sub Flowdown Required	Clause Practical Experience	Sec 874 - Commercial Clauses	Priority Removal
252.201-7000	1984-1991	Dec-91	Contracting Officers Representative		No					R	A	
52.232.18	1984-1991	Apr-84	Availability of Funds		No					R	A	
52.216-24	1984-1991	Apr-84	Limitation of Government Liability		No					R	A	
252.204-7006	2001-2009	Oct-05	Billing Instructions		No					R	A	
52.212-1	2009-2017	Jan-17	Instructions to Offerors - Commercial Items		No					R	A	
52.204-7	2009-2017	Oct-16	Central Contractor Registration (System for Award Management)		No					R	A	
52.204-13	2009-2017	Oct-16	System for Award Management Maintenance.		No			AO	R		A	
52.204-12	2009-2017	Oct-16	Data Universal Numbering System Number Maintenance		No					R	A	
52.212-2	2009-2017	Oct-14	Evaluation—Commercial Items.		No					R	A	
52.212-5	2009-2017	Jan-17	Contract T&Cs Required to Implement Statutes or Executive Orders - Commercial Items		No					R	N/A	Yes
52.244-6	2009-2017	Jan-17	Subcontracts for Commercial Items		No					R	N/A	Yes
252.204-7012	2009-2017	Oct-16	Safeguarding Covered Defense Information and Cyber Incident Reporting		No					R	N/A	Yes
216.403-1	2009-2017	Jul-16	Fixed-price incentive (firm target) contracts		No					R	N/A	Yes
252.227-7015	2009-2017	Feb-14	Technical Data - Commercial Items		No					R	N/A	Yes
52.232-40	2009-2017	Dec-13	Providing Accelerated Payments to Small Business Subcontractors (If flowdown required IAW 52.232-40)		No		R				N/A	Yes
252.244-7000	2009-2017	Jun-13	Subcontracts for Commercial Items (Flowdown Requirement)		No					R	N/A	Yes
52.245-1	2009-2017	Apr-12	Government Property (if USG property is involved)		No					R	N/A	Yes
52.222-17	2009-2017	May-14	Nondisplacement of Qualified Workers (E.O. 14395)		No	E.O. 14395		AO	R		N/A	Yes
52.222-62	2009-2017	Jan-17	Paid Sick Leave Under Executive Order 13706 (Jan 2017)		No	E.O. 13706	R		R		N/A	Yes
52.222-50	2009-2017	Mar-15	Combating Trafficking in Persons		No	E.O. 13627	R	AO	R		N/A	Yes
52.219-16	1992-2000	Jan-99	Liquidated Damages - Subcontracting Plan (if subcontract is over \$650K)		Yes	15 U.S.C. 637(d)(4)(F)(i)		AO			N/A	Yes
52.247-64	2001-2009	Feb-06	Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)		Yes	49 U.S.C. 40118	R	AO	R		N/A	Yes
252.246-7008	2009-2017	Oct-16	Sources of Electronic Parts		Yes	P.L. 113-291				R	N/A	Yes
252.246-7007	2009-2017	Aug-16	Contractor Counterfeit Electronic Part Detection and Avoidance System.		Yes	P.L. 113-291				R	N/A	Yes
52.204-10	2009-2017	Oct-16	Reporting Executive Compensation and First-Tier Subcontract Awards.		Yes	P.L. 109-282		AO			N/A	Yes
52.219-9	2009-2017	Jan-17	Small Business Contracting Plan (if subcontract exceeds \$650K)		Yes	5 U.S.C. 637 (d)(4)		AO			N/A	Yes
52.225-1	2009-2017	May-14	Buy American Act—Supplies		Yes	41 U.S.C. 1907		AO			N/A	Yes
52.219-28	2009-2017	Jul-13	Post Award Small Business Program Representation		Yes	15 U.S.C. 632(a)(2)		AO			N/A	Yes
252.225-7009	2009-2017	Oct-14	Restriction on Acquisition of Certain Articles Containing Specialty Metals		Yes	10 U.S.C. 2533				R	N/A	Yes
252.225-7008	2009-2017	Mar-13	Restriction on Acquisition of Specialty Metals		Yes	10 U.S.C. 2533				R	N/A	Yes
52.222-37	2009-2017	Feb-16	Employment Reports of Special Disabled Vets, Vietnam Vets, and Other Eligible Vets (if 52.222-35 applies)		Yes	38 U.S.C. 4212	R	AO	R		N/A	Yes
252.204-7002	1984-1991	Dec-91	Payment for Subline Items Not Separately priced (NSP)		No					R	N/A	
252.227-7020	1992-2000	Jul-95	Rights in Special Works.		No					R	N/A	
252.204-7003	1992-2000	Apr-92	Control of Government Personnel Work Product		No					R	N/A	
52.225-13	2001-2009	Jun-08	Restrictions on Certain Foreign Purchases		No			AO			N/A	
52.237-11	2001-2009	Sep-08	Accepting and Dispensing of \$1 Coin		No			AO			N/A	
52.277-13	2001-2009	Dec-07	Patent Rights -- Ownership by the Government		No					R	N/A	
52.227-17	2001-2009	Dec-07	Rights in Data -- Special Works.		No					R	N/A	
52.248-1	2001-2009	Feb-00	Value Engineering (if subcontract over \$150K)		No					R	N/A	
52.222-3	2001-2009	Jun-03	Convict Labor		No	E.O. 11755		AO			N/A	
52.209-10	2009-2017	Nov-15	Prohibition on Contracting with Inverted Domestic Corporations		No			R			N/A	
52.204-18	2009-2017	Jul-15	Commercial and Government Entity Code Maintenance		No					R	N/A	
252.215-7000	2009-2017	Dec-12	Pricing Adjustments for certified cost		No					R	N/A	
252.203-7003	2009-2017	Dec-12	Agency Office of the Inspector General		No					R	N/A	
52.212-4	2009-2017	Jan-17	Contract Terms and Conditions--Commercial Items.		No					R	N/A	
52.212-3	2009-2017	Jan-17	Offeror Representation and Certs - Commercial Items		No					R	N/A	
52.204-21	2009-2017	Jun-16	Basic Safeguarding of Covered Contractor Information Systems		No		R				N/A	
252.225-7013	2009-2017	May-16	Duty-Free Entry		No					R	N/A	
252.204-7015	2009-2017	May-16	Notice of Authorized Disclosure of Information for Litigation Support		No					R	N/A	
252.219-7003	2009-2017	Mar-16	Small Business Subcontracting Plan (DOD)		No					R	N/A	
252.211-7003	2009-2017	Mar-16	Item Identification and Valuation		No					R	N/A	
252.209-7004	2009-2017	Oct-15	Subcontracting with Firms that are owned or controlled by the USG of a Terrorist Country		No					R	N/A	
252.245-7004	2009-2017	Mar-15	Reporting, Reutilization, and Disposal		No					R	N/A	
252.219-7004	2009-2017	Oct-14	Small Business Subcontracting Plan (Test Program)		No					R	N/A	
252.223-7006	2009-2017	Sep-14	Prohibition on Storage and Disposal of Toxic and Hazardous Materials		No					R	N/A	
52.277-14	2009-2017	May-14	Rights in Data -- General.		No					R	N/A	
52.277-11	2009-2017	May-14	Patent Rights -- Ownership by the Contractor		No					R	N/A	
252.204-7004	2009-2017	Feb-14	Alternate A, System for Award Management		No					R	N/A	
52.232-39	2009-2017	Jun-13	Unforceability of Unauthorized Obligations		No					R	N/A	

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Clause Number	Time Frame	Clause Date	TITLE	(R=Required, AO=As Appropriate) (N/A = Not Applicable, A=Applicable)	Required by law	Citation	52.244-6 Required	52.212-5 Required	52.212-5 Sub Flowdown Required	Clause Practical Experience	Sec 874 - Commercial Clauses	Priority Removal
252.246-7003	2009-2017	Jun-13	Notification of Potential Safety Issues		No					R	N/A	
252.223-7008	2009-2017	Jun-13	Prohibition of Hexavalent Chromium		No					R	N/A	
252.232-7006	2009-2017	May-13	Wide Area Workflow Payment Instructions		No					R	N/A	
252.211-7007	2009-2017	Aug-12	Reporting of Government Furnished Property		No					R	N/A	
252.232-7003	2009-2017	Jun-12	Electronic Submission of Payment Requests		No					R	N/A	
52.251-1	2009-2017	Apr-12	Government Supply Sources		No					R	N/A	
252.245-7003	2009-2017	Apr-12	Contractor Property Management System Administration		No					R	N/A	
52.204-4	2009-2017	May-11	Printed or Copied Double Sided on Recycled Paper		No					R	N/A	
52.204-9	2009-2017	Jan-11	Personal Identity Verification of Contractor Personnel		No					R	N/A	
52.215-21	2009-2017	Oct-10	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data -- Mods		No					R	N/A	
52.215-20	2009-2017	Oct-10	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data		No					R	N/A	
52.215-13	2009-2017	Oct-10	Subcontractor Certified Cost or Pricing Data -- Modifications		No					R	N/A	
52.215-12	2009-2017	Oct-10	Subcontractor Certified Cost or Pricing Data		No					R	N/A	
52.215-2	2009-2017	Oct-10	Audit and Records -- Negotiation		No					R	N/A	
52.215-23	2009-2017	Oct-09	Limitations on Pass-Through Charges		No					R	N/A	
52.215-22	2009-2017	Oct-09	Limitations on Pass-Through Charges -- Identification of Subcontract Effort		No					R	N/A	
252.204-7010	2009-2017	Jan-09	Requirement for Contractor to Notify DoD if subject to reporting under US IAEA		No					R	N/A	
52.223-18	2009-2017	Aug-11	Encouraging Contractor Policies to Ban Text Messaging While Driving (if contract is over \$3K)		No	E.O. 13513		AO			N/A	
52.222-40	2009-2017	Dec-10	Notification of Employee Rights under the National Labor Relations Act (if subcontract over \$10K)		No	E.O. 13496	R	AO	R		N/A	
52.222-19	2009-2017	May-14	Child Labor - Cooperation and Authorities and Remedies		No	E.O. 13126		AO			N/A	
52.203-19	2009-2017	Jan-17	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).		No		R		R		N/A	
52.225-5	2009-2017	Oct-16	Trade Agreements		No			AO			N/A	
52.203-14	2009-2017	Oct-15	Display of Hotline Poster(s).		No			AO			N/A	
52.222-21	2009-2017	Apr-15	Prohibition of Segregated Facilities		No		R	AO	R		N/A	
52.226-6	2009-2017	May-14	Promoting Excess Food Donation to Nonprofit Organizations		No			AO	R		N/A	
52.222-53	2009-2017	May-14	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Req		No			AO	R		N/A	
52.222-51	2009-2017	May-14	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-MCR		No			AO	R		N/A	
52.222-44	2009-2017	May-14	Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment		No			AO			N/A	
52.222-43	2009-2017	May-14	Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment (MY/Option Contracts)		No			AO			N/A	
52.233-11	2009-2017	Jul-16	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons		No	E.O. 13693		AO			N/A	
52.223-12	2009-2017	Jul-16	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners		No	E.O. 13693		AO			N/A	
52.223-21	2009-2017	Jun-16	Foams		No	E.O. 13693				R	N/A	
52.223-20	2009-2017	Jun-16	Aerosols		No	E.O. 13693				R	N/A	
52.222-59	2009-2017	Dec-16	Compliance with Labor Laws		No	E.O. 13673		R	R		N/A	
52.222-60	2009-2017	Oct-16	Paycheck Transparency (Executive Order 13673) (Oct 2016),		No	E.O. 13673	R		R		N/A	
52.222-55	2009-2017	Dec-15	Minimum Wages under Executive Order 13658 (Dec 2015),		No	E.O. 13658	R	AO	R		N/A	
52.223-16	2009-2017	Oct-15	Acquisition of EPEAT®-Registered Personal Computer Products (only for use by gov or COGO facilities)		No	E.O. 13423		AO			N/A	
52.223-14	2009-2017	Jun-14	Acquisition of EPEAT®-Registered Televisions		No	E.O. 13423		AO			N/A	
52.223-13	2009-2017	Jun-14	Acquisition of EPEAT®-Registered Imaging Equipment		No	E.O. 13423		AO			N/A	
52.222-54	2009-2017	Oct-15	Employment Eligibility Verification (if subcontract exceeds \$K except for commercial item)		No	E.O. 12989		AO	R		N/A	
52.222-26	2009-2017	Oct-16	Equal Opportunity (if subcontract over \$50K and has more than 50 employees)		No	E.O. 11246	R	AO	R		N/A	
252.205-7000	1984-1991	Dec-91	Provision of Information to Cooperative Agreement Holders		Yes	10 U.S.C. 2416				R	N/A	
52.222-25	1984-1991	Apr-84	Affirmative Action Compliance		Yes	41 CFR 60-1		AO			N/A	
52.239-1	1992-2000	Aug-96	Privacy or Security Safeguards		Yes	5 U.S.C. 552a		AO			N/A	
52.232-30	1992-2000	Oct-95	Installment Payments for Commercial Items		Yes	41 U.S.C. 4505		AO			N/A	
52.233-3	1992-2000	Aug-96	Protest after award		Yes	31 U.S.C. 3553		R			N/A	
52.223-9	2001-2009	May-08	Estimate of Percentage of Recovered Material Content for EPA-Designated Items.		Yes	42 U.S.C. 6962(c)(3)(A)(ii)		AO			N/A	
52.233-4	2001-2009	Oct-04	Applicable Law for Breach of Contract Claim		Yes	P.L. 108-77, 108-78		R			N/A	
52.223-15	2001-2009	Dec-07	Energy Efficiency in Energy-Consuming Products (for use in federally controlled building)		Yes	42 U.S.C. 8259b		AO			N/A	
52.226-5	2001-2009	Nov-07	Restrictions on Subcontracting Outside Disaster or Emergency Area		Yes	42 U.S.C. 5150		AO			N/A	
52.226-4	2001-2009	Nov-07	Notice of Disaster or Emergency Area Set-Aside		Yes	42 U.S.C. 5150		AO			N/A	
52.203-6	2001-2009	Sep-06	Restrictions on Contractor Sales to the Government (if subcontract over \$100K)		Yes	41 U.S.C. 4704		AO			N/A	
52.232-29	2001-2009	Feb-02	Terms for Financing of Purchases of Commercial Items		Yes	41 U.S.C. 4505		AO			N/A	
52.219-7	2001-2009	Jun-03	Notice of Partial Small Business Set-Aside		Yes	15 U.S.C. 644		AO			N/A	
52.203-17	2009-2017	Apr-14	Contractor Employee Whistleblower Rights		Yes	Sec. 839, P.L. 112-239	R				N/A	
52.219-8	2009-2017	Nov-16	Utilization of Small Business Concerns (if subcontract is over \$150K)		Yes	5 U.S.C. 637(d)(2)		AO	R		N/A	
52.232-33	2009-2017	Jul-13	Payment by Electronic Fund Transfer-System for Award Management		Yes	31 U.S.C. 3332		AO			N/A	
252.247-7023	2009-2017	Apr-14	Transportation of Supplies By Sea		Yes	10 U.S.C. 2631				R	N/A	
52.203-15	2009-2017	Jun-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009		Yes	Sec. 1553, P.L. 111-5		AO			N/A	

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52.204-14	2009-2017	Oct-16	Service Contract Reporting Requirements		Yes	P.L. 111-117		R			N/A	
52.204-15	2009-2017	Oct-16	Service Contract Reporting Requirements for Indefinite-Delivery Contracts.		Yes	P.L. 111-117		AO			N/A	
52.224-3	2009-2017	Jan-17	Privacy Training (Jan 2017)		Yes	5 U.S.C. 552a	R		R		N/A	
52.222-42	2009-2017	May-14	Statement of Equivalent Rates for Federal Hires		Yes	5 U.S.C. 5341		AO			N/A	
52.247-63	2009-2017	Jan-17	Preference for US Flag Air Carriers		Yes	46 U.S.C. 1241(b)				R	N/A	
52.225-3	2009-2017	Nov-12	Buy American Act—Free Trade Agreements-Israeli Trade Act		Yes	41 U.S.C. Ch 83		AO			N/A	
52.222-41	2009-2017	May-14	Service Contract Labor Standards		Yes	41 U.S.C. ch 67		AO	R		N/A	
52.203-13	2009-2017	Oct-15	Contractor Code of Business Ethics and Conduct (If over \$5M and more than 120 days)		Yes	41 U.S.C. 3509	R		R		N/A	
52.209-9	2009-2017	Jun-13	Updates of Publicly Available Information Regarding Responsibility Matters		Yes	41 U.S.C. 2313		AO			N/A	
52.222-35	2009-2017	Oct-15	Equal Opportunity for Disabled Veterans, Vets of Vietnam Era, and Other Eligible Vets (over \$100K)		Yes	38 U.S.C. 4212(a)	R	AO	R		N/A	
52.209-6	2009-2017	Oct-15	Protecting the USG Interest when subcontracting with Contractors Debarred (does not apply to COTS)		Yes	31 U.S.C. 6101		AO			N/A	
52.232-36	2009-2017	May-14	Payment by Third Party		Yes	31 U.S.C. 3332		AO			N/A	
52.232-34	2009-2017	Jul-13	Payment by Electronic Fund Transfer-Other than System for Award Management		Yes	31 U.S.C. 3332		AO			N/A	
52.222-36	2009-2017	Jul-14	Affirmative Action for Workers with Disabilities (if subcontract over \$15K)		Yes	29 U.S.C. 793	R	AO	R		N/A	
52.219-27	2009-2017	Nov-11	Notice of Service-Disabled Veteran-Owned Small Business Set-Aside		Yes	15 U.S.C. 657f		AO			N/A	
52.219-4	2009-2017	Oct-14	Notice of Price Evaluation Preference for HUB Zone Small Business Concerns		Yes	15 U.S.C. 657a		AO			N/A	
52.219-13	2009-2017	Nov-11	Notice of Set-Aside of Orders		Yes	15 U.S.C. 644(r)		AO			N/A	
52.219-6	2009-2017	Nov-11	Notice of Total Small Business Set-Aside		Yes	15 U.S.C. 644		AO			N/A	
52.219-30	2009-2017	Dec-15	Notice of Set-Aside for, or Sole Source Award to, women-owned Small Business Concerns Eligible Under the women-Owned Small Business Program.		Yes	15 U.S.C. 637(m)		AO			N/A	
52.219-29	2009-2017	Dec-15	Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.		Yes	15 U.S.C. 637(m)		AO			N/A	
52.242-5	2009-2017	Jan-17	Payments to Small Business Subcontractors		Yes	15 U.S.C. 637(d)(12)		AO			N/A	
52.219-14	2009-2017	Jan-17	Limitations on Subcontracting		Yes	15 U.S.C. 637(a)(14)		AO			N/A	
52.219-3	2009-2017	Nov-11	Notice of HUBZone Set-Aside or Sole Source Award		Yes	13 CFR 125.6(e)		AO			N/A	
52.225-26	2009-2017	Oct-16	Contractors Performing Private Security Functions Outside the United States		Yes	10 U.S.C. 2302	R	AO	R		N/A	