
COMMERCIAL CLAUSES

FAR & DFAR FLOW DOWN PROVISIONS

The FAR (Federal Acquisition Regulation) and DFAR (Defense Federal Acquisition Regulation) clauses cited in the KEG Commercial and KEG Non-Commercial FAR and DFAR Flow Down tables, where applicable by their terms, are incorporated by reference as if set forth in full text. The full text of all clauses incorporated by reference is available at <https://www.acquisition.gov/> for the FAR clauses and at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html> for the DFAR clauses.

The effective version of each FAR and/or DFAR provision shall be the same version as that which appears in the Buyer's prime contract or higher sub-tier subcontracts under which this Purchase Order or Agreement is a subcontract. If any of the clauses are not applicable by their terms, they shall be self-deleting.

Seller agrees to negotiate with Buyer to incorporate additional provisions herein or to change provisions as Buyer reasonably deems necessary to comply with U.S. Government Contracts.

If so identified, this Order is a "rated order" certified for national defense use and Seller shall follow all the requirements of the Defense Priorities and Allocation System Regulations (DPAS) (15 C.F.R. part 700).

DEFINITIONS: See FAR 2.100 for more definitions

Commercial Item:

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 –
 - a. Has been sold, leased, or licensed to the general public; or
 - b. 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 –
 - a. Modifications of a type customarily available in the commercial marketplace; or
 - b. Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications mean 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—
 - a. 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
 - b. 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

Commercially available off-the-shelf (COTS) item:

1. Means any item of supply (including construction material) that is—
 - a. A commercial item (as defined in paragraph (1) of the definition in this section);
 - b. Sold in substantial quantities in the commercial marketplace; and
 - c. Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
2. Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum

Construction: Construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property (except that for use in subpart [22.5](#), see the definition at [22.502](#)).

DFARS: Defense Federal Acquisition Regulation Supplement

FARS: Federal Acquisition Regulation Supplement

Micro-purchase Threshold: \$3,000, except ---

1. For acquisitions of construction subject to the Davis-Bacon Act, then \$2,000; or
2. For acquisitions of services subject to the Service Contract Act, then \$2,500; or
3. For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as described in 13.201(g)(1), except for construction subject to the Davis-Bacon Act ---
 - a. \$15,000 in case of any contract to be awarded and performed, or purchase to be made, inside the US; and
 - b. \$25,000 in the case of any contract to be awarded and performed, or purchases to be made, outside the US

Simplified Acquisition Threshold (SAT): means \$150,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 428a), the term means—

1. \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and
2. \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States

Small business subcontractor: means a concern, including affiliates, that for subcontracts valued at—

1. \$10,000 or less, does not have more than 500 employees; and
2. More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR part 121 (see [19.102](#)) for the product or service it is providing on the subcontract

Subcontract: means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor: means ---

1. any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and
2. includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

Supplies: means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing

KEG COMMERCIAL FAR FLOW DOWN PROVISIONS:

- Clauses Applicable to All Purchase Orders

Clause #	Clause Title	Date	Threshold
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009	JUN 2010	All subcontracts funded with Recovery Act funds
52.204-2	Security Requirements	AUG 1996	All subcontracts that involve access to classified information
52.204-9	Personal Identity Verification – Contract Clause	JAN 2011	Paragraph (d) requires inclusion of this clause in all subcontracts when subcontractor employees require routine physical access to a federally-controlled facility or information system
52.211-14	Notice of Priority Rating for National Defense Use, Emergency Preparedness, and Energy Use Program	APR 2008	Solicitations when the contract to be awarded will be a rated order
52.211-15	Defense Priority and Allocation Requirements	APR 2008	Contracts that are rated orders
52.212-4	Contract Terms and Conditions – Commercial Items	MAY 2014	All contracts and subcontracts for the acquisition of commercial items.
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items	NOV 2012	Paragraph (e)(1) requires inclusion of clause in subcontracts for commercial items
52.217-9	Option to Extend the Term of the Contract	MAR 2000	If Contractor and Government agrees to extend the contract term and subcontract relationships are critical to performance
52.219-8	Utilization of Small Business Concerns	JAN 2011	Paragraph (d)(9) of FAR 52.219-9 requires this clause to be included in all subcontracts that offer further subcontracting opportunities
52.222-21	Prohibition of Segregated Facilities	FEB 1999	Paragraph (c) requires this clause to be included in all subcontracts and purchase orders that are subject to the contract's Equal Opportunity clause
52.222-26	Equal Opportunity	MAR 2007	Subparagraph (c)(10) requires this clause to be included in all subcontracts or purchase orders that are not exempted by the rules, regulations, or orders of the Secretary of Labor under E.O. 11246
52.222-41	Service Contract Labor Standards	MAY 2014	Paragraph (l) requires the inclusion of this clause in all subcontracts
52.222-50	Combating Trafficking in Persons	FEB 2009	All subcontracts
52.222-50	Combating Trafficking in Persons, Alternate I	AUG 2007	All subcontracts performed outside US
52.222-51	Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements	MAY 2014	All subcontracts for exempt services

Clause #	Clause Title	Date	Threshold
52.222-53	Exemption from Application of Service Contract Act to Contracts for Certain Services – Requirements	MAY 2014	All subcontracts for exempt services
52.225-13	Restrictions on Certain Foreign Purchases	JUN 2008	Paragraph (c) requires inclusion of this clause in all subcontracts
52.225-19	Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the US	MAR 2008	Paragraph (q) requires the inclusion of this clause in all subcontracts that require subcontractor personnel to perform outside the US in a designated operational area during contingency operations, humanitarian or peacekeeping operations, or other military operations or military exercises, when designated by the combatant commander, and when supporting a diplomatic or consular mission that has been designated by the Dept. of Stat as a danger pay post.
52.229-2	North Carolina State and Local Sales and Use Tax	APR 1984	Solicitations and contracts for construction to be performed in North Carolina
52.233-3	Protest After Award	AUG 1996	All solicitations and contracts
52.234-4	Earned Value Management System	MAY 2014	Paragraph (g) requires all subcontractors named in the paragraph to comply with the clause requirements.
52.242-17	Government Delay of Work	APR 1984	All subcontracts
52.243-1	Changes – Fixed Price	AUG 1987	All subcontracts
52.244-6	Subcontracts for Commercial Items	DEC 2010	Paragraph (d) requires inclusion of this clause in all subcontracts awarded under the prime contract
52.246-16	Responsibility for Supplies	APR 1984	All subcontracts
52.247-64	Preference for Privately Owned US Flag Commercial Vessels	FEB 2006	All subcontracts or purchase orders awarded under the contract, except those for the acquisition of commercial items unless the contract is for ocean transportation services; construction contract or the supplies being transport are being resold or distributed to the Government without adding value or shipped in direct support of US military
52.249-1	Termination for Convenience of the Government (Fixed-Price) (Short Form)	APR 1984	All subcontracts

- Clauses Applicable to Purchase Orders over \$3,000 (Micro-purchase Threshold)

Clause #	Clause Title	Date	Threshold
52.222-54	Employment Eligibility Verification	JUL 2012	Paragraph (e) requires the inclusions of this clause in each subcontract that has a value of more than \$3,000; includes work performed in the US, and is for construction, or commercial or noncommercial services
52.223-18	Encouraging Contractor Policies to Ban Text	AUG 2011	Paragraph (d) requires inclusion of this clause in all subcontracts that exceed the

Clause #	Clause Title	Date	Threshold
	Messaging While Driving		micro-purchase threshold

- Clauses Applicable to Purchase Orders over \$10,000

Clause #	Clause Title	Date	Threshold
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010	Exceeds \$10,000 and performed in the US, unless exempted by the Secretary of Labor

- Clauses Applicable to Purchase Orders over \$15,000

Clause #	Clause Title	Date	Threshold
52.222-36	Affirmative Action for Workers with Disabilities, alternate I	JUN 1998	Paragraph (d) requires the inclusion of this clause in every subcontract or purchase order over \$15,000 unless exempted by rules, regulations, or orders of the Secretary of Labor
52.225-8	Duty-Free Entry	OCT 2010	Paragraph (j) requires the inclusion of this clause in any subcontract if supplies identified in the schedule to be accorded duty-free entry will be imported into the customs territory of the US, or if other foreign supplies in excess of \$15,000 may be imported

- Clauses Applicable to Purchase Orders over \$25,000

Clause #	Clause Title	Date	Threshold
52.226-6	Promoting Excess Food Donation to Nonprofit Organizations	MAR 2009	Paragraph (e) requires the inclusion of this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than \$25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract.

- Clauses Applicable to Purchase Orders over \$100,000

Clause #	Clause Title	Date	Threshold
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	SEP 2010	Paragraph (g) requires the inclusion of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations or orders of the Secretary of Labor

Clause #	Clause Title	Date	Threshold
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	SEP 2010	Paragraph (g) requires the inclusion of this clause in subcontracts over \$100,000 unless exempted by the Secretary of Labor

- Clauses Applicable to Purchase Orders over \$150,000 (Simplified Acquisitions Threshold – SAT)

Clause #	Clause Title	Date	Threshold
52.202-1	Definitions	JAN 2012	Exceeds Simplified Acquisitions Threshold (SAT)
52.203-3	Gratuities	APR 1984	Exceeds SAT
52.203-6	Restrictions on Subcontractor Sales to the Government – Alternate I	OCT 1995	All subcontracts for commercial items that exceed SAT
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	OCT 2010	All subcontracts that exceed SAT; subcontractor shall submit declaration outlined in 52.203-11 (c) and (d)
52.203-16	Preventing Personal Conflicts of Interest	DEC 2011	Paragraph (d) requires inclusion of this clause in subcontracts that exceed SAT and in which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	APR 2014	Paragraph (c) requires the prime contractor incorporate the substance of this clause in all subcontracts that exceed SAT
52.222-17	Non-displacement of Qualified Workers	JAN 2013	Every services subcontract above SAT requires the subcontractor to (1) honor the requirements of paragraph (b) and (c) of the clause regarding service employees of a predecessor Contractor or subcontractor; (2) provide the Contractor with information about the subcontractor's service employees needed by the Contractor to comply with paragraphs (d) and (e); and (3) comply with recording keeping requirements of paragraph (f).
52.245-1	Government Property	APR 2012	The requirements of this clause is to be included in all subcontracts under which Government property is acquired or furnished for subcontract performance

- Clauses Applicable to Purchase Orders over \$650,000

Clause #	Clause Title	Date	Threshold
52.219-9	Small Business Subcontracting Plan	JAN 2011	All subcontracts that are in possible excess of \$650,000

- Clauses Applicable to Purchase Orders over \$700,000

Clause #	Clause Title	Date	Threshold
52.230-3	Disclosure and Consistency or Cost Accounting Practices	MAY 2014	Subcontracts exceeding \$700,000 – flowdown does not include paragraph (b)

- Clauses Applicable to Purchase Orders over \$5,000,000

Clause #	Clause Title	Date	Threshold
52.203-13	Contractor Code of Business Ethics and Conduct	APR 2010	Subcontracts that have a value in excess of \$5,000,000 and a performance period of 120 days or more

KEG COMMERCIAL DFAR FLOW DOWN PROVISIONS:

- Clauses Applicable to All Purchase Orders

Clause #	Clause Title	Date	Threshold
252.204-7012	Safeguarding of Unclassified Controlled Technical Information	NOV 2013	Substance of this clause to be included in all subcontracts
252.204-7014	Limitations on the Use or Disclosure of Information by Litigation Support Solicitation Contractors	FEB 2014	Substance of this clause to be included in all subcontracts
252.204-7015	Disclosure of Information to Litigation Support Contractors	FEB 2014	Substance of this clause to be included in all subcontracts
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material	DEC 1991	Include this clause, including paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this contract, unless the Contractor knows that the item being purchased contains no precious metals
252.211-7003	Item Identification and Valuation	DEC 2013	If Contractor acquires by subcontract, any item(s) for which unique item identification is required in accordance with paragraph (c)(1) of this clause, the Contract shall include this clause, including this paragraph, the contractor shall include this clause, including paragraph (g), in the applicable subcontracts
252.211-7007	Reporting of Government-Furnished Property	AUG 2012	When Government-furnished property is in the possession of subcontractors, Contractors shall ensure that reporting is accomplished using the data elements required in paragraph (d)
252.215-7009	Proposal Adequacy Checklist	JAN 2014	Include this clause when applicable
252.217-7001	Surge Option	JAN 2014	Include this clause when applicable
252.219-7003	Small Business Subcontracting Plan	AUG 2012	For subcontracting plans that specifically identify small businesses
252.219-7004	Small Business Subcontracting Plan	JAN 2011	Include this clause when required to include FAR 52.219-8, FAR 52.219-9 and DFARS 252.219-7003
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials	APR 2012	Include this clause in each subcontract which requires, may require, or permits a subcontractor to treat or dispose of non-DoD-owned toxic or hazardous materials
252.223-7008	Prohibition of Hexavalent Chromium	MAY 2011	Required to be included in subcontracts for supplies, maintenance and repair

			services, or construction materials
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	JUN 2012	Required to be include in subcontracts in accordance with paragraph (e) of DFARS clause
252.225-7048	Export-Controlled Items	JUN 2013	Include the substance of this clause in all subcontracts
252.227-7013	Rights in Technical Data – Noncommercial Items	FEB 2014	Include whenever technical data for noncommercial items, or commercial items developed in part at Government expense, is to be obtained from a subcontractor for delivery to the Government
252.227-7015	Technical Data – Commercial Items	FEB 2014	Include when technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government
252.227-7033	Rights in Shop Drawings	APR 1966	Include in subcontracts at any tier.
252.227-7037	Validation of Restrictive Markings on Technical Data	JUN 2012	Include if the subcontract or supplier at any tier requires the delivery of technical data.
252.227-7038	Patent Rights – Ownership by the Contractor (Large Business)	JUN 2012	Include the substance of FAR 52.227-11 in subcontracts for experimental, developmental or research work to be performed by a small business or nonprofit organization, and the substance of this clause in all other subcontracts for experimental, developmental, or research work
252.228-7005	Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles	DEC 1991	Include clause in subcontracts to require subcontractor cooperation and assistance in accident investigation
252.229-7011	Reporting of Foreign Taxes – U.S. Assistance Programs	SEP 2005	Include the substance of this clause in all subcontracts for commodities that exceed \$500.
252.236-7013	Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers	JAN 2009	Include this clause, in subcontracts for commercial items or commercial components, awarded at any tier, involving the acquisition of steel as a construction material
252.237-7010	Prohibition of Interrogation of Detainees by Contractor Personnel	NOV 2011	Include if the subcontract may require subcontractor personnel to interact with detainees in the course of their duties.
252.237-7019	Training for Contractor Personnel Interacting with Detainees	SEP 2006	Include this clause, in subcontracts for commercial items or commercial components, awarded at any tier, that may require subcontractor personnel to interact with detainees in the course of their duties
252.239.7000	Protection Against Compromising Emanations	JUN 2004	Include this clause if subcontractor supplies any information technology
252.239.7016	Telecommunications Security Equipment, Devices, Techniques and Services	DEC 1991	Include this clause in all subcontracts that require securing telecommunications
252.239.7018	Supply Chain Risk	NOV 2013	Include the substance of this clause in subcontracts that involve the development

			or delivery of any information technology
252.244-7000	Subcontracts for Commercial Items and Commercial Components	MAR 2013	Include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier: 252.223-7008, 252.225-7009, 252.225-7039, 252.227-7015, 252.227-7037, 252.236-7013, 252.237-7010, 252.237-7019, 252.246-7003, 252.247-7023, 252.247-7024
252.246-7003	Notification of Potential Safety Issues	JAN 2007	Include this clause, in subcontracts for commercial items or commercial components, awarded at any tier, for (1) parts identified as critical safety items, (2) system and subsystems, assemblies, and subassemblies integral to a system; or (3) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System	MAY 2014	The Contractor must include the substance of this clause in subcontracts, including subcontracts for commercial items, for electronic parts or assemblies containing electronic parts.
252.247-7003	Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer	JUN 2013	Include the substance of this clause in subcontract, including subcontracts for commercial items, with motor carriers, brokers or freight forwarders
252.247-7023	Transportation of Supplies by Sea	MAY 2002	include this clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier, if required in accordance with paragraph (b) of DFAR clause 252.247-7023
252.247-7024	Notification of Transportation of Supplies by Sea	MAR 2000	Include this clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier, if required in accordance with paragraph (b) of DFAR clause 252.247-7024

- Clauses Applicable to Purchase Orders over \$150,000 (Simplified Acquisitions Threshold – SAT)

Clause #	Clause Title	Date	Threshold
252.249-7002	Notification of anticipated Contract Termination or Reduction	OCT 2010	Include this clause for subcontractors with subcontracts of \$150,000 or more.

- Clauses Applicable to Purchase Orders over \$500,000

Clause #	Clause Title	Date	Threshold
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises and Native Hawaiian Small Business Concerns	SEP 2004	Include the substance of this clause in all subcontracts exceeding \$500,000