

Attachment A

“FLOW-DOWN” CLAUSES APPLICABLE TO PURCHASE ORDERS FOR COMMERCIAL ITEMS INVOLVING FUNDS FROM A FEDERAL GOVERNMENT CONTRACT

If the Order involves funds from a Federal government contract – or funds from a subcontract at any tier relating to a Federal government contract – the following clauses from the Federal Acquisition Regulation (“FAR”) and the Defense Federal Acquisition Regulation Supplement (“DFARS”) are incorporated into the Order by reference where applicable and form a part of the terms and conditions of the Order. The full text of the FAR clauses may be found at <https://acquisition.gov/far/>. The full text of the DFARS clauses may be found at <http://farsite.hill.af.mil/vdfara.htm>. Seller agrees to flow down all applicable FAR and DFARS clauses to lower-tier subcontractors.

Where necessary to make the language of the FAR and DFARS clauses applicable to the Order, the term “contractor” shall mean “Seller,” the term “contract” or “subcontract” shall mean “the Order,” and the terms “government,” “contracting officer,” and equivalent terms and phrases shall mean “Harvard.”

CLAUSES APPLICABLE TO PURCHASES OF “COMMERCIAL ITEMS”

The following clauses apply to Orders involving “commercial items,” a term defined at FAR 52.202-1. In general, a “commercial item” is a product or service that is available to the general public in the commercial marketplace. Only the following clauses are required for purchases of “commercial items”; however, Harvard may choose to flow down a minimum number of additional clauses when necessary to satisfy the University’s contractual obligations.

FAR 52.202-1	Definitions (Nov 2013)
FAR 52.203-13	Contractor Code of Business Ethics and Conduct (Apr 2010) (applies only if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days; 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)
FAR 52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (if the subcontract is funded under the American Recovery and Investment Act)
FAR 52.219-8	Utilization of Small Business Concerns (Oct 2014) ((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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.)
FAR 52.222-26	Equal Opportunity (Mar 2007)
FAR 52.222-35	Equal Opportunity for Veterans (Jul 2014)
FAR 52.222-36	Equal Opportunity for Workers with Disabilities (Jul 2014)
FAR 52.222-37	Employment Reports on Veterans (Jul 2014)
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act (Dec 2010), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40
FAR 52.222-50	Combating Trafficking in Persons (Feb 2009)
FAR 52.222-54	Employment Eligibility Verification (Aug 2013) (applies to subcontracts for commercial or noncommercial services (except for commercial services that are part of the purchase of a commercially available off-the-shelf (“COTS”)) item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item) or subcontracts for construction; and that have a value of over \$3,000 and includes work performed in the United States)
FAR 52.225-26	Contractors Performing Private Security Functions Outside the United States (Jul 2013)

	(applies only to subcontracts performed in contingency operations (DoD only), combat operations or other significant military operations upon agreement by the Secretary of State)
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Dec 2013) (applies only to subcontracts with small business concerns)
FAR 52.244-6	Subcontracts for Commercial Items (Oct 2014)
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64
DFARS 252.211-7003	Item Identification and Valuation (Dec 2013) (applies when subcontractor provides items for which a unique item identification is required)
DFARS 252.219-7004	Small Business Subcontracting Plan (Test Program) (Oct 2014) (applies to contracts that offer subcontracting possibilities, that are expected to exceed \$650,000 (\$1.5 million for construction of any public facility), and are required to include FAR 52.219-8, Utilization of Small Business Concerns)
DFARS 252.223-7008	Prohibition on Hexavalent Chromium (Jun 2013) (applies to all subcontracts, including subcontracts for commercial items, that are for supplies, maintenance and repair services, or construction materials)
DFARS 252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (Oct 2014) (applies to all subcontracts for items containing specialty metals to the extent necessary to ensure compliance of end products)
DFARS 252.225-7013	Duty-Free Entry (Nov 2014) (applies to subcontracts for items from a qualifying country supplied to the Government as part of an end product or of another component, or to subcontracts for nonqualifying country components for which the duty is expected to exceed \$200 per unit)
DFARS 252.227-7015	Technical Data – Commercial Items (Feb 2014) (applies when any technical data related to commercial items developed in any part at private expense will be obtained from the subcontractor for delivery to the Government)
DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data (Jun 2013) (applies to subcontracts requiring the delivery of technical data)
DFARS 252.229-7011	Reporting of Foreign Taxes – U.S. Assistance Programs (Sep 2005) (applies to subcontracts for supplies exceeding \$500)
DFARS 252.235-7002	Animal Welfare (Dec 2011) (applies to subcontracts involving research of live vertebrate animals)
DFARS 252.235-7004	Protection of Human Subjects (Jul 2009) (applies to subcontracts involving human subject research, but does not apply to the use of cadaver materials)
DFARS 252.236-7013	Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Jun 2013) (applies to any subcontract that involves the acquisition of steel as a construction material)
DFARS 252.244-7000	Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (Jun 2013)
DFARS 252.246-7003	Notification of Potential Safety Issues (Jun 2013) (applies to subcontracts for critical safety item parts; systems and subsystems, assemblies, and subassemblies integral to a system; or repair, maintenance, logistics support or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system)
DFARS 252.247-7003	Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (Jun 2013) (applies to all subcontracts for commercial items, with motor carriers, brokers, or freight forwarders)
DFARS 252.247-7023	Transportation of Supplies by Sea (Apr 2014) (applies to commercial item contracts where the supplier has not added value to the goods, or is shipping items in support of U.S. military contingency operations, or is providing commissary or exchange cargoes)

DFARS 252.247-7024	Notification of Transportation of Supplies by Sea (Mar 2000) (applies to commercial item contracts where the supplier has not added value to the goods, or is shipping items in support of U.S. military contingency operations, or is providing commissary or exchange cargoes)
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