

## 52.244-2 Subcontracts.

As prescribed in 44.204(a)(1), insert the following clause:

*Subcontracts* (Jun 2020)

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

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with part 44 of the *Federal Acquisition Regulation* (FAR).

"*Consent to subcontract*" means the *Contracting Officer's* written consent for the Contractor to enter into a particular *subcontract*.

*Subcontract* means any contract, as defined in FAR subpart 2.1, entered into by a subcontractor to furnish *supplies* or services for performance of the prime contract or a *subcontract*. It includes, but is not limited to, *purchase orders*, and changes and modifications to *purchase orders*.

(b) When this clause is included in a fixed-price type contract, *consent to subcontract* is required only on unpriced contract actions (including unpriced modifications or unpriced *delivery orders*), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, *consent to subcontract* is required for any *subcontract* that-

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds-

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the *simplified acquisition threshold*, as defined in FAR 2.101 on the date of *subcontract* award, or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the *simplified acquisition threshold*, as defined in FAR 2.101 on the date of *subcontract* award, or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless *shall* obtain the *Contracting Officer's* written consent before placing the following *subcontracts*:

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(e)

(1) The Contractor *shall* notify the *Contracting Officer* reasonably in advance of placing any *subcontract* or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the *supplies* or services to be subcontracted.

(ii) Identification of the type of *subcontract* to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed *subcontract* price.

(v) The subcontractor's current, complete, and accurate *certified cost or pricing data* and Certificate of Current *Cost or Pricing Data*, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting-

(A) The principal elements of the *subcontract* price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason *certified cost or pricing data* were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's *certified cost or pricing data* in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's *certified cost or pricing data* were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation *shall* identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the *Contracting Officer* in advance of entering into any *subcontract* for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the *Contracting Officer* to any *subcontract* nor approval of the Contractor's purchasing system *shall* constitute a determination-

(1) Of the acceptability of any *subcontract* terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No *subcontract* or modification thereof placed under this contract *shall* provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type *subcontracts shall* not exceed the fee limitations in FAR [15.404-4\(c\)\(4\)\(i\)](#).

(h) The Contractor *shall* give the *Contracting Officer* immediate written notice of any action or suit filed and prompt notice of any *claim* made against the Contractor by any subcontractor or vendor

that, in the opinion of the Contractor, *may* result in litigation related in any way to this contract, with respect to which the Contractor *may* be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following *subcontracts*, which were evaluated during negotiations:

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(End of clause)

*Alternate I* (June 2020). As prescribed in 44.204 (a)(2), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Contractor nevertheless *shall* notify the *Contracting Officer* reasonably in advance of entering into any (i) cost-plus-fixed-fee *subcontract*, or (ii) fixed-price *subcontract* that exceeds either the *simplified acquisition threshold*, as defined in FAR 2.101 on the date of *subcontract* award, or 5 percent of the total estimated cost of this contract. The notification *shall* include the information required by paragraphs (e)(1)(i) through (iv) of this clause.

**Parent topic:** 52.244 [Reserved]