

# Part 44 - Subcontracting Policies and Procedures

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## **44.000 Scope of part.**

(a) This part prescribes policies and procedures for consent to subcontracts or advance notification of subcontracts, and for review and approval of contractors' purchasing systems.

(b) The consent and advance notification requirements of subpart 44.2 do not apply to prime contracts for commercial products or commercial services.

## **44.001 Definitions.**

As used in this part—

*Contractor* means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.

*Contractor purchasing system review (CPSR)* means the complete assessment of a contractor's purchasing of material and services, subcontracting, and subcontract management from developing the requirement through completing subcontract performance.

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

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

## **Subpart 44.1 - [Reserved]**

## **Subpart 44.2 - Evaluation and award**

### **44.201 Consent to subcontracts and requirements for advance notice.**

#### **44.201-1 Consent requirements.**

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in paragraph (d) of 52.244-2, Subcontracts. The contracting officer may require consent to subcontract to protect the Government because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance.

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for certain subcontracts identified in paragraph (c) of 52.244-2, Subcontracts.

#### **44.201-2 Advance notification requirements.**

Under cost-reimbursement contracts, the contractor is required by statute to notify the contracting officer as follows:

(a) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, [10 U.S.C. 3322\(c\)](#) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(b) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, [41 U.S.C. 3905](#) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

#### **44.201-3 Contracting officer's responsibilities.**

(a) The contracting officer responsible for consent (see part 42 regarding delegation) must review the contractor's notification (*i.e.*, request to subcontract) and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

(b) Careful and thorough review and consideration of the request to subcontract is necessary when—

(1) The contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the contractor and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a noncompetitive basis, at prices that appear to be unreasonable, or at higher prices than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

(c) If the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer must identify those subcontracts in paragraph (j) of the clause at 52.244-2.

#### **44.201-4 Consent limitations.**

(a) The contracting officer's consent to a subcontract or approval of the contractor's purchasing system does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) Contracting officers must not consent to—

- (1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations in part 15;
- (2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;
- (3) Subcontracts obligating the contracting officer to deal directly with the subcontractor; or
- (4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government.

#### **44.201-5 Contract clauses.**

(a)(1) Insert the clause at 52.244-2, Subcontracts, in solicitations and contracts when contemplating—

- (i) A cost-reimbursement contract;
  - (ii) A labor-hour, time-and-materials, or letter contract that exceeds the simplified acquisition threshold; or
  - (iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated.
- (2) If a cost-reimbursement contract is planned, for civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, use the clause with its Alternate I.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.

(c) When contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is planned; or

(2) A time-and-materials, labor-hour, or architect-engineer contract is planned.

## **Subpart 44.3 - Postaward**

### **44.301 Contractors' purchasing systems reviews.**

#### **44.301-1 Objective.**

The objective of a contractor purchasing system review (CPSR) is to assess the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

#### **44.301-2 Requirements.**

(a) The responsible contracting officer (see part 42 regarding delegation) must determine if a CPSR is needed based on factors such as the past performance of the contractor, and the volume, complexity and dollar value of subcontracts.

(b) If a determination is made under paragraph (a) to conduct a CPSR, at least every three years the contracting officer must determine whether a CPSR is needed.

(c) The contracting officer must monitor a contract to ensure that the contractor is effectively managing its purchasing program.

(d) Surveillance must be accomplished in accordance with a plan developed by the contracting officer with the assistance of subcontracting, audit, pricing, technical, or other specialists as necessary. The plan should cover pertinent phases of a contractor's purchasing system and pertinent operations that affect the contractor's purchasing and subcontracting.

#### **44.301-3 Responsibilities for granting, withholding or withdrawing approval.**

The contracting officer is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system, and must—

(a) Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and adequately protect the Government's interests; and

(b) Promptly notify the contractor in writing after granting, withholding, or withdrawing approval.

#### **44.301-4 Notice.**

(a) The notice granting purchasing system approval must include—

(1) Identification of the plant or plants covered by the approval;

(2) The effective date of approval; and

(3) A statement that system approval—

(i) Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;

(ii) Waives the contractual requirement for advance notification in fixed-price contracts, but not for cost-reimbursement contracts;

(iii) Waives the contractual requirement for consent to subcontracts in fixed-price contracts and for specified subcontracts in cost-reimbursement contracts but not for those subcontracts, if any, selected for special surveillance and identified in the contract Schedule; and

(iv) May be withdrawn at any time at the contracting officer's discretion.

(b) In certain circumstances, the contracting officer may require consent for certain subcontracts or classes of subcontracts even though the contractor's purchasing system is approved. The system approval notification must identify the class or classes of subcontracts requiring consent. When sufficient weaknesses in a particular area of subcontracting are identified, requiring consent to subcontract provides the contracting officer additional visibility. See 52.244-2(d).

## **Subpart 44.4 - Subcontracts for Commercial Products and Commercial Services**

### **44.401 Definition.**

*Subcontract*, as used in this subpart, includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

### **44.402 Requirements.**

(a) *Preference*. Require contractors and subcontractors to incorporate, to the maximum extent practicable, commercial products, commercial services, or nondevelopmental items as components of items supplied to the agency.

(b) *Flowdown*. The clauses listed in the clause at 52.244-6, Subcontracts for Commercial Products and Commercial Services, flow down to subcontracts for commercial products and commercial services as indicated in the specific clause. Do not require a contractor or subcontractor to apply to any of its divisions, subsidiaries, affiliates, subcontractors, or suppliers that are furnishing commercial products, commercial components, or commercial services a clause that is not listed in 52.244-6.

(c) *Inapplicable laws*. A list of laws that do not apply to subcontracts for the acquisition of commercial products, including commercially available off-the-shelf items, or commercial services is available at [www.acquisition.gov/inapplicablelaws](http://www.acquisition.gov/inapplicablelaws).

### **44.403 Contract clause.**

Insert the clause at 52.244-6, Subcontracts for Commercial Products and Commercial Services, in solicitations and contracts.

# Part 52 - Solicitation Provisions and Contract Clauses

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[52.244 \[Reserved\]](#)

[52.244-1 \[Reserved\]](#)

[52.244-2 Subcontracts.](#)

[52.244-3 \[Reserved\]](#)

[52.244-4 Subcontractors and Outside Associates and Consultants \(Architect-Engineer Services\).](#)

[52.244-5 Competition in Subcontracting.](#)

[52.244-6 Subcontracts for Commercial Products and Commercial Services.](#)

## **52.244 [Reserved]**

### **52.244-1 [Reserved]**

### **52.244-2 Subcontracts.**

As prescribed in 44.201-5(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 44.201-5(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.

### **52.244-3 [Reserved]**

### **52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).**

As prescribed in 44.201-5(b), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

## **52.244-5 Competition in Subcontracting.**

As prescribed in 44.201-5(c), insert the following clause:

### COMPETITION IN SUBCONTRACTING (AUG 2024)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the DoD Mentor-Protégé Program ( [10 U.S.C. 4902](#)), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

## **52.244-6 Subcontracts for Commercial Products and Commercial Services.**

As prescribed in 44.403, insert the following clause:

### SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (JAN 2025)

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

*Commercial product, commercial service and nondevelopmental item* have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

*Subcontract* has the meaning at FAR 44.401

(b) *Requirements.*

(1) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.

(2) If a clause in the following table is included in the contract, the Contractor shall insert the clause in subcontracts for commercial products or commercial services and must flow down the requirements of the clause to subcontracts as indicated in the specific clause:

Number	Title	Date
52.203-13	Contractor Code of Business Ethics and Conduct	NOV 2021
52.203-17	Contractor Employee Whistleblower Rights	NOV 2023
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	JAN 2017
52.204-9	Personal Identity Verification of Contractor Personnel	JAN 2011
52.219-8 *	Utilization of Small Business Concerns	JAN 2025
52.222-35	Equal Opportunity for Veterans	JUN 2020
52.222-36	Equal Opportunity for Workers with Disabilities	JUN 2020
52.222-37	Employment Reports on Veterans	JUN 2020
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	DEC 2010
52.222-41	Service Contract Labor Standards	AUG 2018
52.222-50	Combating Trafficking in Persons	NOV 2021
52.222-50 with Alt I	Combating Trafficking in Persons, with its Alternate I	MAR 2015

52.222-51	Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements	MAY 2014
52.222-53	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements	MAY 2014
52.222-54	Employment Eligibility Verification	JAN 2025
52.222-62	Paid Sick Leave Under Executive Order 13706	JAN 2022
52.224-3	Privacy Training	JAN 2017
52.224-3 with Alt I	Privacy Training, with Alternate I	JAN 2017
52.225-26	Contractors Performing Private Security Functions Outside the United States	OCT 2016
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	MAR 2023
52.240-3	Security Prohibitions and Exclusions	DATE
52.240-3 with Alt I	Security Prohibitions and Exclusions, with its Alternate I	DATE
52.240-4	Security Requirements	DATE
52.240-4 with Alt II	Security Requirements, with its Alternate II	DATE
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	NOV 2021

\* Include only if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(c) *Subcontracts*. The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this contract.

(End of clause)