



Supply Chain Symposium: DFARS Flow-Downs

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Goals

- Review the mechanisms by which flow-downs are commonly incorporated
- Understand the differences in flow-down requirements for commercial item v. noncommercial item contracts
- Distinguish between mandatory DFARS and recommended flow-downs applicable to various types of defense-related subcontracts

FAR v. DFARS

- FAR = Federal Acquisition Regulations
 - 48 C.F.R. § 1.101 *et seq.*
- DFARS = Defense Federal Acquisition Regulation Supplement
 - 48 C.F.R. § 201.104 *et seq.*
 - “[A]pplies to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.” DFARS 201.104
- FAR & DFARS requirements work in harmony with one another

Quick Overview of Flow-Downs

What Are Flow-down Provisions?

- USG prime contract clauses inserted into a subcontract
- These “flow-down” the responsibilities of the prime to the subcontractor
- Can significantly impact the obligations and risks for performing the subcontract

What Is A Subcontract?

- A contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders. FAR 44.101
- “Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor. FAR 44.101

Mandatory vs. Non-Mandatory Flow-downs

Mandatory Flow-downs

- Specifically require the prime to include them in subcontracts
- Not negotiable
- *E.g.*, whistleblower rights, export controls, cybersecurity reporting

Non-Mandatory Flow-downs

- Prime contract does not explicitly require they be included in subcontracts
- Yet, Prime must ensure subcontractor compliance with Prime contract requirements
- Certain clauses should also be flowed-down even if not required
- *E.g.*, changes, termination for default, requests for equitable adjustment

Why Do Flow-downs Matter?

Prime Contractor

- Meet contract requirements
- USG consent to subcontract (FAR Subpart 44.2) & purchasing system approval (FAR Subpart 44.3)
- Maximize cost recovery by ensuring cost reasonableness
- Manage/allocate performance uncertainties and risk



Subcontractor

- Ability to participate in huge federal marketplace
- Develop past performance history
- Minimize exposure to prime contractor risks
- Ensure company can meet compliance obligations

What If A Mandatory Clause Is Not Flowed Down?

Prime Contractor

- In breach of USG Prime contract
- Can be subject to numerous remedies, such as:
- Withholding of payments,
- Termination of contract, and
- Suspension or debarment



Subcontractor

- Under “Christian Doctrine,” subs can be subject to USG mandatory requirements even if not in subcontract
- *UPMC Braddock, et al. v. Harris*, Civ. 09-1210 (D.D.C. Mar. 30, 2013)
- Incorporated mandatory socio-economic requirements into subcontract even though not in subcontract
- Based on *G.L. Christian & Associates v. United States*, 312 F.2d 418, 426 (Ct. Cl. 1963) finding contract requirements reflecting a “significant or deeply ingrained strand of public procurement policy” apply to government contracts even if requirements not in contract
- Before *UPMC Braddock*, Christian Doctrine only applied to Prime contracts

How Can I Tell When A Clause Is Required To Be Flowed Down To A Subcontract?

1. Read the clause—it will specify

- Some clauses must be flowed-down verbatim
 - “Contractor shall include this clause in subcontracts”
- Other clauses can be modified
 - “Contractor shall include the substance of this clause in subcontracts”

2. Read the text reference that prescribes use of the clause (e.g., conditions or threshold)

Which Clauses are Required to be Flowed Down Depend on the Type and Value of the Contract:

Type of goods or services

- Commercial Items
- Non-Commercial Items

Prime and subcontract payment terms

- Fixed price
- Cost reimbursement
- Time and materials

Contract value

- OFCCP Socio-Economic Clauses: \$10,000
- Simplified Acquisition Threshold: \$150,000 (FAR 2.101)
- TINA Threshold: \$750,000 as of October 1, 2015

Incorporation Strategies

- List out only clauses specifically applicable to each subcontract
 - Greatest accuracy, largest administrative burden
- Incorporate entirety of prime contract FAR / DFARS provisions by reference
 - Easy to accomplish, but over-inclusive and may create logical inconsistencies
- Create and use templates specific to various types of subcontracts
 - Achieves balance of burden and tailoring, but may not obtain 1 to 1 match

Incorporation Strategies: Traps for the Unwary

- The Purchase Order Problem
 - POs unconnected to a larger subcontract must incorporate required flow-downs as well
 - Flow-downs that are always mandatory for purchases of a specific type should be incorporated into the PO template
 - For larger contractors, it is also common to reference a standard template document stored online
 - Beware Battle of Forms issues
 - *Christian* doctrine may help resolve such issues

Incorporation Strategies: Traps for the Unwary (*cont'd*)

- Failure to Include Appropriate Preface Language
 - “Government” shall mean “Contractor” . . . “Contractor” shall mean “Subcontractor”
 - Without such language, subcontractor requirements with respect to flow-downs are unclear
 - Need to make sure all necessary terms are translated
 - e.g., Contracting Officer, Contracting Officer’s Representative, etc.

Commercial Item v. Noncommercial Item Subcontracts

What Is A Commercial Item? FAR 2.101

- Generally, any item that is of a type customarily used by the general public, and has been sold, leased, or licensed to the general public, or
- Any item that would satisfy a criterion above, but for-
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements

Laws Not Applicable to Commercial Item Subcontracts – DFARS 212.504

10 U.S.C. 2306(b)	Prohibition on Contingent Fees
10 U.S.C. 2313(c)	Examination of Records of a Contractor
10 U.S.C. 2324	Allowable Costs Under Defense Contracts
10 U.S.C. 2327	Reporting Requirement Regarding Dealings with Terrorist Countries
10 U.S.C. 2384(b)	Requirement to Identify Suppliers
10 U.S.C. 2391	Notification of Substantial Impact on Employment
10 U.S.C. 2393	Prohibition Against Doing Business with Certain Offerors or Contractors
10 U.S.C. 2397(a)(1)	Reports by Employees or Former Employees of Defense Contractors
10 U.S.C. 2397b(f)	Limits on Employment for Former DoD Officials
10 U.S.C. 2397c	Defense Contractor Requirements Concerning Former DoD Officials
10 U.S.C. 2408(a)	Prohibition on Persons Convicted of Defense Related Felonies
10 U.S.C. 2410b	Contractor Inventory Accounting System Standards
10 U.S.C. 2501	Notification of Proposed Program Termination
10 U.S.C. 2534	Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.
10 U.S.C. 2631	Transportation of Supplies by Sea (with exceptions, see DFARS 252.247-7023)
Others:	E.g., various provisions of authorization acts, including domestic content restrictions,

Exemption to Domestic Preference for COTS items

- DFARS 212.570 - Applicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf item.
- “Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7003-3(b)(2)(i).”

Limited Flow-Downs for Commercial Item Subcontracts

252.244-7000 – SUBCONTRACTS FOR COMMERCIAL ITEMS

- (a) The Contractor is **not required to flow down the terms** of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial items at any tier under this contract, **unless so specified in the particular clause.**
- (b) While not required, the Contractor **may** flow down to subcontracts for commercial items **a minimal number of additional clauses necessary to satisfy its contractual obligation.**
- (c) The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this contract, including subcontracts for the acquisition of commercial items.

Mandatory DFARS Flow-Downs For All Commercial-Items Subcontracts

252.203-7002	Requirement to Inform Employees of Whistleblower Rights
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support
252.225-7048	Export-Controlled Items
252.227-7015	Technical Data – Commercial Items
227.227-7037	Validation of Restrictive Markings on Technical Data
227-244-7000	Subcontracts for Commercial Items

- Additional mandatory flow-downs are dependent on contract specifics
- Required flow-downs for commercial item subcontracts generally set the floor or minimum requirements for contracts of a particular type or character

Breakdown of Mandatory DFARS Flow-Downs For All Commercial-Items Subcontracts

■ Whistleblower Protections

- 252.203-7002 – Requirement to Inform Employees of Whistleblower Rights
 - Must inform employees in writing of whistleblower rights

■ Government May Disclose Info to Lit Support

- 252.204-7015 – Notice of Authorized Disclosure of Information for Litigation Support
 - Government may disclose to a litigation support contractor sensitive information received in a quote, offer, or during performance of the contract

■ Export Controls

- 252.225-7048 – Export-Controlled Items
 - Contractor must follow ITAR, EAR, and other export controls laws

Breakdown of Mandatory DFARS Flow-Downs For All Commercial-Items Subcontracts (*cont'd*)

■ Cyber Protections and Reporting

- 252.204-7012 – Safeguarding Covered Defense Information and Cyber Incident Reporting (DEC 2015)
 - Applies to all defense contracts, including commercial-item contracts
 - Requires “adequate security” for information systems that have CDI resident on or transitioning through it
 - Must comply with NIST SP 800-171 security controls
 - Cyber incident and compromise reporting within 72 hours of discovery
 - Requires cooperation with any post-report investigations,
 - Includes preserving images of all affected systems for 90 days
 - Flow-down “this clause” to all subcontracts including for small business and commercial items

Breakdown of Mandatory DFARS Flow-Downs For All Commercial-Items Subcontracts (*cont'd*)

■ Intellectual Property

- 252.227-7015 – Technical Data – Commercial Items
 - Contractor generally allowed to place restrictions on Government use of data, subject to certain restrictions
 - Contrasts sharply with rights afforded under contracts for noncommercial items
- 227.227-7037 – Validation of Restrictive Markings on Technical Data
 - Subcontractor must be able to justify restrictive markings and such restrictions can be challenged

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples)

- Monetary threshold triggers (examples):
 - **> \$500K**
 - 252.226-7001 – Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns
 - **> \$650K**
 - 252.219-7003 – Small Business Subcontracting Plan (DoD Contracts)
 - Required for contracts > \$650k (\$1.5M for construction) unless for personal services or performed OCONUS
 - See 252.219-7004(f) for incorporation requirement
 - **> \$1.5M**
 - 252.211-7000 – Acquisition Streamlining
 - **>\$50M**
 - 252.234.7004 – Cost and Software Data Reporting System
 - “Contractor shall require CSDR reporting from subcontractors at any tier with a subcontract that exceeds \$50 million.”

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) (*cont'd*)

- SOW Dependent:
 - **Sensitive Information**
 - 252.204-7000 – Disclosure of Information
 - Required where contractor will have access to or generate unclassified information that may be sensitive
 - **Precious Metals**
 - 252.208-7000 – Intent to Furnish Precious Metals as Government-Furnished Material
 - Required unless known that the item being purchased contains no precious metals
 - **Items critical to safety or integral to a system**
 - 252.246-7003 – Notification of Potential Safety Issues
 - Requires notification of nonconformances or deficiencies that may have an impact on critical safety items or integral systems
 - 252.237-7023 – Continuation of Essential Contractor Services
 - Requires plan to provide mission-essential contractor services and must notify if unable to perform such services

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) *(cont'd)*

- SOW Dependent: *(cont'd)*
 - **Toxic or Hazardous Materials**
 - 252.204-7010 – Requirement to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol
 - 252.223-7006 – Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials
 - 252.223-7002 – Safety Precautions for Ammunition and Explosives
 - 252.223-7007 – Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives
 - 252.223-7008 – Prohibition of Hexavalent Chromium

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) (*cont'd*)

- SOW Dependent: (*cont'd*)
 - **Contracts requiring transport by sea**
 - 252.247-7023 – Transportation of Supplies by Sea
 - Requires subcontractors to use U.S. Flag vessels under certain circumstances
 - **Research and development contracts**
 - 252.235-7002 – Animal Welfare
 - Must comply with laws and regulations pertinent to treatment of research animals
 - 252.235-7003 – Frequency Authorization
 - Requires approval for use of unallocated radio frequencies
 - 252.235-7004 – Protection of Human Subjects
 - Mandates certain approvals required when using human subjects

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) (*cont'd*)

- Particular types of contracts:
 - **Aviation related contracts**
 - 252.228-7001 – Ground and Flight Risk
 - Outlines conditions of Government's self-insurance of loss of aircraft
 - 252.228-7005 – Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles
 - **Litigation support contracts**
 - 252.204-7014 – Limitations on the Use or Disclosure of Information by Litigation Support Contractors

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) *(cont'd)*

- Particular types of contracts:
 - **Foreign Acquisitions**
 - Restrictions on acquisition of materials from foreign countries
 - 252.225-7007 (Items on Munitions List) – Can't buy from China
 - 252.225-7009 (Specialty Metals)
 - Subject to exceptions, “[a]ny specialty metals incorporated in items delivered under this contract shall be melted or produced in the United States, its outlying areas, or a qualifying country.”

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) (*cont'd*)

- Particular types of contracts:
 - **Foreign Acquisitions (*cont'd*)**
 - Flow-downs related to certain duties and levies
 - 252.225-7013 (Duty Free Entry)
 - Contract price does not include duty
 - Contractor may claim duty-free entry for supplies to be delivered under the contract
 - Contractor must pay duty on supplies diverted to nongovernmental use
 - 252.229-7011 (Foreign taxes for contracts in support of U.S. Assistance Programs)
 - Commodities acquired under contracts for U.S. Assistance Programs are exempt from all value added taxes and customs duties imposed by the recipient country
 - Contractor must report taxes that are nonetheless imposed

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) (*cont'd*)

- Particular types of contracts:
 - **Foreign Acquisitions (*cont'd*)**
 - Performance of work overseas
 - 252.225-7039 – Defense Contractors Performing Private Security Functions Outside the United States
 - Must register weapons and armored vehicles
 - Must comply with federal requirements
 - 252.225-7040 – Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States
 - Contractor accepts risk of performing in dangerous or austere conditions
 - Contractor may only use arms in self defense
 - Contractor must comply with regulations regarding government provided security, reporting, investigations, etc.

Other Mandatory DFARS Flow-Downs Dependent on Contract Specifics (non-exhaustive examples) (*cont'd*)

- Particular types of contracts:
 - **IT contracts**
 - 252.239-7016 – Telecommunications Security Equipment, Devices, Techniques, and Services
 - Contractor must secure telecommunications systems and use government approved systems
 - 252.246-7007 – Contractor Counterfeit Electronic Part Detection and Avoidance System
 - Required in prime contracts involving delivery of electronic parts, See DFARS 246.870-3
 - Small business set-asides excluded
 - Applies only to CAS-covered contractors
 - If applicable, requires flow-down of the “substance of this clause” to all subcontracts for electronic items

Intellectual Property under the DFARS

- Technical Data v. Computer Software
 - **Technical Data** (DFARS 252.227-7013)
 - Recorded information of a scientific or technical nature
 - Any form or method of recording
 - Does not include:
 - Computer software (covered in a another clause)
 - Financial, administrative, cost or pricing, or management data
 - Other information incidental to contract administration.
 - **Computer Software** (DFARS 252.227-7014)
 - Computer programs and related materials that would enable software to be reproduced
 - Does not include databases

Intellectual Property under the DFARS (*cont'd*)

- IP Rights Framework
 - **Unlimited Rights** (DFARS 227-7103-5)
 - Government's right to use is unlimited and perpetual
 - USG has the right:
 - Use, disclose, reproduce, prepare derivative works, distribute copies to the public
 - Perform publicly and display publicly, in any manner and for any purpose
 - Permit others to do so.
 - See DFARS 252.227-7013(b)(1) (Rights In Technical Data--Noncommercial Items)

Intellectual Property under the DFARS (*cont'd*)

- IP Rights Framework
 - **Government Purpose Rights (DFARS 227-7103-5)**
 - USG can:
 - Use, modify, reproduce, release, perform, display, or disclose technical data *within the Government* without restriction
 - Release or disclose technical data outside the Government
 - authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data
 - for USG purposes.
 - See DFARS 252.227-7013(b)(2) (Rights In Technical Data--Noncommercial Items)

Intellectual Property under the DFARS (*cont'd*)

- IP Rights Framework
 - **Limited Rights** (Technical Data) (DFARS 227-7103-5)
 - USG may use or reproduce technical data
 - USG may not, without the written permission:
 - Release or disclose the technical data outside the Government,
 - Use the technical data for manufacture, or
 - Authorize the technical data to be used by another party, except under very limited circumstances.
 - **Restricted Rights** (Software) (DFARS 252.227-7014)
 - Government's get minimal rights when software developed at private expense
 - Examples of permitted uses:
 - Use on computer for which acquired
 - Copy for use as a backup
 - Modified, but derivative software subject to same restrictions
 - Use by IT support personnel

Intellectual Property under the DFARS (*cont'd*)

- DFARS IP provisions determine what types of rights are granted:
 - 252.227-7013 – Rights in Technical Data – Noncommercial Items
 - USG gets:
 - ***Unlimited rights*** in data developed exclusively with USG funds in performance of USG contract
 - ***Government purpose rights*** in data developed with mixed funding
 - ***Limited rights*** in technical data ***developed exclusively at private expense*** and ***marked with limited rights legend***
 - 252.227-7014 – Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
 - USG gets:
 - ***Unlimited rights*** in software developed exclusively with USG funds in performance of USG contract
 - ***Government purpose rights*** in software developed with mixed funding
 - ***Restricted rights*** in software developed ***exclusively at private expense***

Intellectual Property under the DFARS (*cont'd*)

- DFARS IP provisions determine what types of rights are granted (*cont'd*):
 - 252.227-7018 – Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program
 - USG gets:
 - From contract award until 5-years after completion of project (Phase I–III):
 - **Limited Rights** in *Technical Data* (generated under SBIR contract)
 - **Restricted Rights** in *Computer Software* (generated under SBIR contract)
 - After expiration of the SBIR data protection period:
 - USG gets Government use rights

Intellectual Property under the DFARS (*cont'd*)

- DFARS IP provisions determine what types of rights are granted:
 - 252.227-7038 – Patent Rights—Ownership by the Contractor (Large Business)
 - Contractor may elect to retain ownership of inventions, subject to disclosure obligations, notice, and filing obligations
 - Government gets a nonexclusive, nontransferable, irrevocable, paid-up license
 - Otherwise, Contractor gets nonexclusive worldwide royalty-free license
 - Generally a mandatory flow-down if contract is for experimental, developmental, or research work
 - For flow-down purposes, license stays with Government
 - Contractor may not condition award of subcontract on obtaining rights to subcontractor's inventions

Intellectual Property under the DFARS (*cont'd*)

- Key Takeaways:
 - Prime should ensure subs provide required licenses to USG
 - Prime must be careful not to overstep in requesting patent rights from subs

Recommended Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing Down

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing Down

- 252.211-7007 – Reporting of Government-Furnished Property
 - Contractor remains responsible for reporting when Government-Furnished Property is in subcontractor’s possession
- 252.215-7009 – Proposal Adequacy Checklist
 - Matches proposal requirements with specific pages to ensure coverage
 - “offerors may elect to have their prospective subcontractors use the same or similar checklist as appropriate.”
- 252.217-7003 – Changes
 - CO can unilaterally dictate changes, subject to equitable adjustment
- 252.243-7002 – Requests for Equitable Adjustment
 - Incorporation allows Prime to pass on Sub REAs

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing-Down (*cont'd*)

- 252.217-7001 – Surge Option
 - Allows increase in the quantity of supplies or services or acceleration of the schedule for delivery
- 252.217-7009 – Default
 - Allows termination for default
- 252.249-7002 – Notification of Anticipated Contract Termination or Reduction
 - Prime must require subs to provide notice to lower tier subs
- 252.243-7001 – Pricing of Contract Modifications
 - Cost principles apply to price adjustments

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing-Down (*cont'd*)

- 252.222-7006 – Restrictions on the Use of Mandatory Arbitration Agreements
 - Requires Prime to certify that it requires subs not to agree to or enforce a mandatory arbitration agreement with respect to certain tort and civil rights claims
- 252.247-7022 – Representation of Extent of Transportation by Sea
 - Prime offeror required to represent whether it anticipates supplies will be transported by sea in performance of the contract **or any subcontract**

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing-Down (*cont'd*)

■ Additional Warranties

- 252.246-7001 – Warranty of Data
 - Contractor must warranty accuracy of technical data, to the extent a sub is providing such data, Prime will want a warranty from the sub as well
- 252.239-7000 – Protection Against Compromising Emanations
 - Provided IT must be accredited to meet appropriate information assurance requirements, and Prime must correct or replace deficient IT found deficient within 1 year after proper installations

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing-Down (*cont'd*)

- Indemnification

- 252.235-7000 – Indemnification Under 10 U.S.C. 2354–Fixed Price
- 252.235-7001 – Indemnification Under 10 U.S.C. 2354–Cost Reimbursement
- Indemnification flow-down only allowed if Sub has same obligations to Prime as Prime has to the Government

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing-Down (*cont'd*)

■ Foreign Acquisition

- 252.225-7028 – Exclusionary Policies and Practices of Foreign Governments
 - “Contractor and its subcontractors shall not ...”
- 252.225-7043 – Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States
 - “Contractor and its subcontractors. . . shall”

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing-Down (*cont'd*)

■ Specialty IP Provisions

□ 252.227-7020 – Rights in Special Works

□ USG gets:

□ ***Unlimited rights*** in works first produced and required to be delivered under the contract

□ A royalty-free, world-wide, nonexclusive, irrevocable ***license*** to use copyrighted works not first produced under the contract but incorporated into a deliverable

□ Contractor indemnifies USG against unauthorized use of third party copyrighted data

□ If Prime owes indemnity, will want Sub to owe indemnity to Prime

Non-Mandatory DFARS Clauses Prime Contractors Should Consider Flowing-Down (*cont'd*)

■ Specialty IP Provisions

□ 252.227-7021 – Rights in Data—Existing Works

- USG gets nonexclusive, paid-up, world-wide license to distribute works called for under the contract
- USG may authorize others to use works
- Contractor must indemnify USG for unauthorized use of third party copyrighted data
- If Prime owes indemnity, will want Sub to owe indemnity to Prime

□ 252.227-7025 – Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends

- Contractor's use of marked data limited in accordance with markings
- Contractor must indemnify USG for unauthorized use

Flow-Down Best Practices – Prime Contractor

Understand your contract – paying close attention to clauses incorporated by reference (FAR, DFARS, etc. clauses)

Create a matrix that identifies flow-down requirements specific to each contract based on subcontract value and type

Incorporate non-mandatory clauses that are necessary to mitigate risk and ensure subcontractor compliance

Monitor subcontractor compliance

Monitor new clauses in contract mods, and modify subcontracts to flow-down

Flow-Down Best Practices – Subcontractor

Beware of language incorporating all prime contract requirements

Know which flow-downs are mandatory

These are non-negotiable, so don't waste time on them

Potentially push back on non-mandatory flow-downs

Monitor new clauses in modifications

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