COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
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September 11, 2017

Defense Acquisition Regulations System
Attn: Ms. Linda Nielson
DFARS Subgroup RRTF
OUSD (AT&L) DPAP/DARS
Room 3B941
3060 Defense Pentagon
Washington, DC 20301-3060

Subject: Defense Federal Acquisition Regulation Supplement (DFARS); DFARS Subgroup to the Department of Defense (DoD) Regulatory Reform Task Force, Review of DFARS Solicitation Provisions and Contract Clauses (DFARS-RRTF-2017-01) – CODSIA Case 2017-004.

Dear Ms. Nielson:

On behalf of the undersigned members of the Council of Defense and Space Industry Associations (CODSIA),[1] we offer the attached comments for the Defense Federal Acquisition Regulation Supplement (DFARS) Subgroup to the Department of Defense (DoD) Regulatory Reform Task Force (RRTF) review of DFARS solicitation provisions and contract clauses. We appreciate your extension of the comment period; however, given the length and complexity of the DFARS, our review is largely limited to high-priority areas on which we could reach consensus. Omission of commentary on a specific solicitation provision or contract clause does not necessarily mean that it should not be modified or removed, and we encourage further government-industry discussion on ways to streamline and improve the DFARS.

We thank you for your attention to our comments and considering our recommendations. If you need any additional information, please contact Mr. Ryan Ouimette, the CODSIA case manager, at rouimette@ndia.org or (703) 247-9463. To facilitate further dialogue with CODSIA and our member associations, please contact Mr. David Drabkin, at CODSIA@codsia.org, who serves as CODSIA Administrator.

Respectfully submitted,

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[1] At the suggestion of the Department of Defense, CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues. CODSIA consists of seven associations – the Aerospace Industries Association, the American Council of Engineering Companies, the Associated General Contractors of America, the Information Technology Alliance for Public Sector, the National Defense Industrial Association, the Professional Services Council, and the U.S. Chamber of Commerce. CODSIA acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. Together these associations represent thousands of government contractors and subcontractors. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

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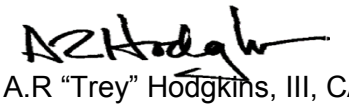

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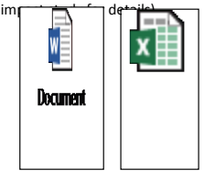
DFARS Citation	Title	Stautory Citation (if any)	Issue (I-VI in Federal Register Notice)	Recommendation	Explanation
252.203-7000	Requirements Relating to Compensation of Former DoD Officials.	Paragraphs (a)(4) and (5) of Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)	I-V	Delete	This clause should be eliminated since it places a burden on contractors to determine what type of work a former government official engaged in while in federal service, whether the official has sought an ethics opinion through the government's ethics advisory process, and whether the official is in compliance with any post-government employment restrictions that may apply to the official. Only the government official knows the matters on which he or she worked while in government employment. A contractor has no way to verify the accuracy of a government employee's recollections of such matters, and in some cases it may not be appropriate for the government employee to reveal to a potential employer the specifics of such matters due to restrictions on the protection of sensitive information. None of the information or processes called for by this clause is within the contractor's control, so it is inappropriate to place contractors in a position of enforcing post-government employment restrictions and even punish those contractors if a former government official fails to follow the government's process and the government's rules relating to prior government employment.
252.203-7001	Prohibition on Persons Convicted of Fraud or other Defense-Contract-Related Felonies	10 U.S.C. 2408	II	Delete	This clause should be eliminated and the topic addressed through the suspension and debarment system and the existing requirements of FAR 52.209-5 and 52.209-6.
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	10 U.S.C. 2409(d)	I,II	Revise or Delete	This clause should be eliminated, or, at a minimum, revised to simply require that the contractor have a policy against retaliation for good faith reporting of misconduct in the award or performance of a US Government contract. The whistleblower protection language in DFARS 203.9 is difficult for a lawyer or human resources professional to understand, even for a native English speaker, to say nothing of translations to other languages. The average employee may not understand the verbiage of the whistleblower protection notification, yet the contractor must spend money and resources reproducing the notice, translating it for non-native English speakers, and publicizing it for employees to see. The notice is not effective and should be eliminated.
252.203-7004	Display of Hotline Posters		II,III	Revise or Delete	This clause should be eliminated, or, at a minimum, revised either to allow the electronic poster to suffice given advances in technology in the workplace, or to allow a contractor's internal anonymous reporting channels to substitute for the DoD hotline poster. It is burdensome and costly to hang special posters and translate the posters into the local language, and there is no clear evidence that contractor employees are using the DoD reporting channels in sufficient volume to justify the expense of the posters. Additionally, contractors are required under FAR 52.203-13, when applicable, to have robust ethics and compliance programs, reporting channels for misconduct, and a requirement to disclose credible evidence of certain types of misconduct to the Inspector General's office. Requiring the distribution and translation of posters does not add benefits that outweigh the costs of the requirement.
252.203-7005	Representation Relating to Compensation of Former DoD Officials.	Paragraphs (a)(4and (5) of Section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)	I-V	Delete	This provision should be eliminated since it places a burden on contractors to determine what type of work a former government official engaged in while in federal service, whether the official has sought an ethics opinion through the government's ethics advisory process, and whether the official is in compliance with any post-government employment restrictions that may apply to the official. Only the government official knows the matters on which he or she worked while in government employment. A contractor has no way to verify the accuracy of a government employee's recollections of such matters, and in some cases it may not be appropriate for the government employee to reveal to a potential employer the specifics of such matters due to restrictions on the protection of sensitive information. None of the information or processes called for by this provision is within the contractor's control, so it is inappropriate to place contractors in a position of enforcing post-government employment restrictions and even punish those contractors if a former government official fails to follow the government's process and the government's rules relating to prior government employment.
252.204-7000	Disclosure of Information		II,III	Delete	By restricting the use of technical data outside of the current contract, this clause is not only burdensome on the contractor who owns the data, but restricts re-use of the data on other government programs and contracts. Protection of classified or "sensitive" information from public disclosure or export is well established by other regulatory and statutory means. This clause is therefore redundant and costly. Additionally, the clause has no statutory basis.

252.204-7004	Alternate A, System for Award Management.	10 U.S.C. 129d	II	Delete	When updating a SAM registration you must fill out or go through every page of the registration in order to be able to submit the registration. This is very cumbersome and Industry feels unnecessary. This causes extra hours entering information that is not needed or listed elsewhere and duplicates efforts. (See attached)
252.204-7006	Billing Instructions		II	Revise	Requiring CLIN information on progress payment request submissions creates unnecessary work for the contractor, delays the approval process, delays the contractor's payment, and creates discrepancies between the government's records and the contractor's records. The proposed change saves time, reducing expenses for both the government and the contractor. The proposed change clarifies when the contract line item is required, saving the contractor submission and reconciliation time. The change also saves the ACO time when approving the progress payment submission, reduces questions when liquidating the deliveries, and reduces the likelihood that the contract will need reconciliation work at DFAS. (See attached)
252.204-7007	Alternate A, Annual Representations and Certifications		II	Revise	Registration in SAM (which includes completion of the included Representations and Certifications) is a requirement to do business with the Federal Government. Contractors are required to complete a specified set of Representations and Certifications deemed to be key by the US Government. When performing as a subcontractor, contractors typically have to complete and submit another set of Representations and Certifications, many of which are duplicates of those already completed in SAM. This duplication of effort exists not only for proposals, but potentially for Final Proposal Revisions and annual recertifications. This additional effort leads to additional costs, which could be eliminated if this duplication was removed. (See attached) Document
252.204-7008	Compliance with Safeguarding Covered Defense Information Controls		II, IV, V	Revise	This provision incorporates the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 "that are in effect that the time the solicitation is issued". There is no requirement that NIST publications go through the rulemaking process, including notice, public comments, and the requirement to respond to comments, and should not be required as part of this provision. Moreover, NIST publications are not issued in a manner that informs the reader of the latest revision in effect at any given time. The NIST website allows for searches of publications but will only retrieve the search term, e.g. NIST 800-171, and NOT the revisions to the publication that may have been issued at a later date. To find later revisions, the reader must search for a particular revision number, e.g. NIST 800-171 revision 1, but the NIST website does not indicate whether later revisions have been issued. We recommend that this provision be revised to specifically call out a particular revision of the NIST standards, unless otherwise agreed by the parties, and that the provision must go through the notice and public comment process before incorporating a new revision of the NIST standards, given that those standards are not subject to the rulemaking process.

252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)		I-IV	Revise	1. This clause incorporates the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 "in effect that the time the solicitation is issued". There is no requirement that NIST publications go through the rulemaking process, including notice, public comments, and the requirement to respond to comments, and should not be B9 as part of this provision. Moreover, NIST publications are not issued in a manner that informs the reader of the latest revision in effect at any given time. The NIST website allows for searches of publications but will only retrieve the search term, e.g. NIST 800-171, and NOT the revisions to the publication that may have been issued at a later date. To find later revisions, the reader must search for a particular revision number, e.g. NIST 800-171 revision 1, but the NIST website does not indicate whether later revisions have been issued. We recommend that this clause be revised to specifically call out a particular revision of the NIST standards, unless otherwise agreed by the parties, and that the clause must go through the notice and public comment process before incorporating a new revision of the NIST standards, given that those standards are not subject to the rulemaking process. 2. Pursuant to DFARS 252.204-7012, contractors across the defense industry are actively working to bring their systems for safeguarding covered defense information (CDI) into compliance by the December 31, 2017 deadline. Contractors have experienced individual services or commands attempting to supplement the DFARS requirements to add requirements beyond the NIST standards and DFARS 252.204-7012 requirements. Given that the DFARS rule implements a standard set of requirements for DoD contractors, we recommend that the rule be revised to prohibit military departments and defense agencies from implementing supplements to the rule.
252.209-7002	Disclosure of Ownership or Control by a Foreign Government	10 U.S.C. 2536 restricts the award of contracts under a national security program to a foreign-government owned entity if access to proscribed information is needed, but there is no statutory basis to require that the representation be completed by an offeror for a contract that does not require access to proscribed information.	II,III	Delete	The prescription for this provision limits its applicability to contracts requiring access to "proscribed information", which is defined to include only the most sensitive types of classified information. Nevertheless, the System for Award Management includes this provision for contractors seeking all types of DoD contracts, and DFARS 252.204-7007 requests that the Contracting Officer check off whether the contractor's representation in SAM for this provision is applicable to a particular contract. This provision should not apply to the vast majority of DoD contracts, yet its completion is required in SAM on a regular basis. At a minimum, this clause should be deleted from SAM and included in a particular solicitation only in the rare instances when it is applicable.
252.209-7003	Reserve Officer Training Corps and Military Recruiting on Campus—Representation	10 U.S.C. 983 applies only to institutions of higher education. There is no statutory basis to include this provision in solicitations or SAM registrations for offerors that are not institutions of higher education.	II,III	Delete	This provision only applies to institutions of higher education, yet it appears in SAM as a provision to which a contractor, other than an institution of higher education, must agree in order to register in SAM. This provision should be removed from SAM.
252.209-7004	Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism	10 U.S.C. 2327 requires that entities of concern should be added to the excluded parties list. The statute does not require a separate clause on this topic.	II,IV	Delete	This clause should be eliminated since the subject of subcontracting with suspended or debarred entities is covered by FAR 52.209-6. If an entity is on the excluded parties list, there should be consistent direction for all government contractors on whether and under what circumstances the excluded party may be used as a subcontractor under any US government contract. FAR 52.209-6 adequately provides consistent direction on this topic and should not be duplicated, supplemented or contradicted by the DFARS.
252.209-7006	Limitations on Contractors Acting as Lead System Integrators		II,III	Delete	These provisions mirror provisions in section 805 of the National Defense Authorization Act for Fiscal Year 2006. Problems with large, complex defense acquisition programs, such as the Army's Future Combat System program, raised concerns. Congress responded with a legislative ban on lead system integrators (LSIs). The statutory and regulatory language is awkward and difficult to interpret. DoD relies on defense contractors to develop and build complex weapon systems. This requires management of thousands of employees, massive supply chains, and significant internal funding. Neither the statutory nor regulatory language reflect the role of today's defense

252.209-7007	Prohibited Financial Interests for Lead System Integrators		II,III	Delete	contractors and the language should be repealed.
252.209-7009	Organizational Conflict of Interest—Major Defense Acquisition Program		II, III	Delete	Limits business opportunities.
252.211-7003	Item Unique Identification and Valuation		II, III	Delete	This requirement is costly to administer and very difficult to manage at the multi-tier level. UID reporting requirements provide no benefits and add extra costs to the contract. Program Managers/Contracting Officers (PMs/COs), don't benefit nor do they use the data in the registry. Services/Agencies are required to create their own Accountable Property Systems of Record (APSR), which creates duplication of effort. PMs/COs task contractors for APSR data and are not utilizing data from the UID registry. The data in the UID registry is not accurate or reliable because of the following: -It allows duplication of numbers for the same asset as there are two types of constructs that can be applied; -When items are shipped, shipping paperwork is not required to account for marked or assigned UID information so the receiving site can/will inadvertently create new UID numbers; -The data in the UID Registry is not reconciled; -The DOD has a significant number of assets that still have not been reported to IUID Registry. For the reasons above, the Government should perform a cost benefit analysis to determine the need for this clause and participation of contractors. Focus should now be on the Services/Agencies APSRs and keeping those databases accurate since the APSRs will be audited for accuracy.
252.211-7007	Reporting of Government-Furnished Property		II,III	Delete	
252.212-7002	Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items	Section 866 of the FY11 NDAA, Section 892 of the NDAA for FY16 (Pub. L. 114-92).	II,IV	Delete	This provision should be eliminated since DOD has awarded very few contracts using this pilot program since its implementation in 2011. There is limited awareness of the program, and many contractors face challenges in meeting the criteria required to use the program. Commercial item acquisition procedures provide for more flexibility, and should be followed instead.
252.215-7002	Cost Estimating System Requirements		I-III	Revise	*See attached document for explana* 
252.215-7008	Only One Offer		II-IV	Delete	In 2010, DoD obligated $44.9B using competition with only one offer. By 2016, this figure was reduced 50% to $19.9B in obligations. There are two more obvious explanations for this dramatic change: First, when DoD is expecting only one offer it changes the acquisition strategy from a full and open competition to sole source and that DoD has improved either its market research or improved the solicitations to ensure more than one offer submits a proposal. As a result, when a contractor is submitting a proposal in response to a solicitation following full and open competition, the contractor expects more than one offer to be submitted. Accordingly, the contractor prices the proposal to be competitive. The requirements in DFARS 252.215-7008 and section 822 of the National Defense Authorization Act for Fiscal Year 2017, P.L. 114-328, section 822, requiring DoD to return to the bidder to require certified cost and pricing data is not necessary: The market forces of competition have already been in effect. Further, by repealing this DFARS clause DoD would still follow FAR 15.403-1, which addresses the action contracting officers should take when there is only one offer.
252.216-7002	Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Commercial Item Acquisition with Adequate Price Competition		III	Delete	This clause requires separate hourly rates for each category of labor performed by a contractor and subcontractor on every competitively awarded non-commercial time-and-material/labor hour proposal. This then becomes the basis for billing. This requirement eliminates the option for summarizing rates afforded by FAR 52.216-29. This process is burdensome to industry in both pricing and billing processes. Increased use by both the Army and Navy will require non-recurring investment by industry to develop systems to price, track and invoice at this very low level of detail. Industry estimates that continued cost of compliance in this changing environment to exceed the benefit (see attached im de tail) 

252.216-7009	Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding	Paragraph (g) of Section 827 of the I	II-IV	Delete	At a minimum, this clause should be moved to DFARS Part 231 as it relates to the allowability of costs and not to type of contract, which is the topic of DFARS Part 216. Rather than simply being moved, this clause should be eliminated as it is difficult to understand and implement, causing the cost of compliance to exceed the benefits. Furthermore, the topic of cost allowability is covered in FAR Part 31 and should remain a topic for the FAR, not the DFARS, since the rules on cost allowability should be consistent across all government contracts so that contractors selling to more than one agency are not burdened by the cost of complying with agency-specific rules.
252.217-7028	Over and Above Work		II,III	Revise	Paragraph (d)(3) of this clauses requires the Government to "verify that the proposed corrective action is appropriate". In practice, this step often requires a complete stop in all work while a Government inspector is found and able to visit the site. When done in connection with an aircraft overhaul this obligation frequently results in significant work stoppages as multiple issues can be uncovered during the overhaul process. This results in a significant delay in the contractor's ability to deliver and an excessive cost incurrence by the Government. We recommend that the DFARS provision be re-written such that the contractor can proceed with the over and above work provided it has: Certified to the CO/ACO that the work is necessary; Documented the nature of the work; and The cumulative value of such over and above work does not exceed 75% of the original contract value.
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements	Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118)	I,II	Delete	This clause should be eliminated as it does not advance the intended policy interests by only applying to federal contractors of one agency and interferes with the employer-employee relationship. If Congress wishes to prohibit mandatory arbitration agreements as described in this clause, broad legislation should be passed that applies to all U.S. employers and not a special set of prohibitions for DoD contractors.
252.222-7007	Representation Regarding Combating Trafficking in Persons		II	Delete	This provision should be eliminated as it is covered by FAR 52.222-56.
252.223-7004	Drug-Free Work Force		II	Delete	This clause duplicates FAR 223-6, Drug-Free Workplace, and should be eliminated.
252.223-7008	Prohibition of Hexavalent Chromium		III	Delete	This clause imposes cost potential cost burdens and is difficult to manage at the multi-tier level. : Given the age of many DoD systems, it is very difficult to eliminate hexavalent chromium without costly redesigns. If DoD does not delete this clause, the applicability of this clause should be revised to apply only to products in development, at which point it may still be cost-effective to seek alternate materials.
252.225-7000	Buy American--Balance of Payments Program Certificate - Basic	41 U.S.C. 8301-8305	III	Revise or Delete	This clause imposes administrative burdens and limits available sources of supply. The DFARS directs contracting officers to use Buy American Act representations as an evaluation factor in competitive procurements, yet the provision and clause are required for sole-source procurements where there is no opportunity to apply an evaluation factor. If a sole-source contractor offers a foreign end product, by definition no domestic product is available and DoD can purchase the product; the provision and clause have no effect on the acquisition and should be eliminated for sole-source procurements. DoD also applies the Buy American Act to foreign military sales procurements even though the statute exempts products purchased for use outside the United States. Because the application of the Buy American Act to FMS sales is not required yet adds costs both for DoD and the contractor, FMS procurements should also be exempt from the provision and clause.
252.225-7001	Buy American and Balance of Payments Program - Basic				
252.225-7003	Report of Intended Performance Outside the United States and Canada—Submission with Offer	10 U.S.C. 2410g	II,III	Delete	This provision and clause requiring costly tracking and reporting of performance outside the United States and Canada that could be performed in the United States, yet there is no indication that DoD does anything substantive with the information that contractors submit. The requirement is a classic example of reporting for reporting's sake and should be eliminated.
252.225-7004	Report of Intended Performance Outside the United States and Canada—Submission after Award				
252.225-7005	Identification of Expenditures in the United States		III	Delete	Preparing and submitting invoice level reporting of expenditures for goods manufactured, or services performed, in the United States that are for use or to be performed outside of the United States represents an extremely administratively burdensome and time consuming process that provides limited, if any, value to the United States Government. (See attached)

252.225-7007	Prohibition on Acquisition of United States Munitions Items from Chinese Military Companies	Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163) and section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)	II	Delete	This clause should be eliminated as unnecessary because existing international trade laws and regulations prohibit the export, reexport, and temporary import to/from China of defense articles and defense service subject to the United States Munitions List, and the permanent import from China of items subject to the United States Munitions List.
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals	10 U.S.C. 2533b	II,III	Delete	The clause requires subcontractor compliance/understanding of unique requirements not used in commercial business practices, driving up prices and in some cases making it impossible for a commercial entity to comply and still generate competitive commercial products.
252.225-7012	Preference for Certain Domestic Commodities	10 U.S.C. 2533a applies only to purchases of certain commodities and does not call for a specific clause in all DoD contracts.	II	Revise	This clause restricts the delivery of the following items to those made in the United States: food, clothing, tents, cotton, silk, canvas and other fibers. Nevertheless, the clause is required for all contracts that exceed the simplified acquisition threshold. The applicability of this clause should be narrowed to contracts for food, clothing, and other materials that are called out in the clause.
252.225-7013	Duty Free Entry		I-IV	Revise	This clause should be modified, along with the Government's process for duty-free entry, to enable contractors to effectively and efficiently obtain duty-free entry for products imported in support of DoD contracts. At least one member contractor created a position to pursue duty-free entry but has been unable to obtain a waiver of duties. The company must pay the duties and cannot include the costs in its pricing on DoD contracts, meaning that this clause is costing the contractor money to do business with DoD, money that could be spent on other initiatives beneficial to DoD.
252.225-7031	Secondary Arab Boycott of Israel	10 U.S.C. 2410(i) requires the certification only when DoD is contracting with a foreign entity	II	Revise	This provision should be modified to apply only to offers from foreign entities. The provision states that if the offeror is foreign, the offeror certifies to the terms of the provision by submission of its offer; however, the prescription for the provision requires that the provision be included in all solicitations, and the System for Award Management includes the provision for all prospective DoD contractors, including US entities. US persons are already subject to the Export Administration Regulation's antiboycott regulations and prohibited by law from complying with the secondary boycott, so having US entities certify under the DFARS is unnecessary and beyond the scope of the law.
252.225-7048	Export-Controlled Items		I	Delete	This clause should be eliminated because it restates compliance obligations under existing export control laws and regulations that are otherwise applicable to contractors.
252.225-7049	Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations	10 U.S.C. 2279 only applies to contracts for commercial satellite services.	II,III	Delete	The prescription for this provision limits its applicability to contracts for commercial satellite services. Nevertheless, the System for Award Management includes this provision for contractors seeking all types of DoD contracts. This provision should not apply to the vast majority of DoD contracts, yet it is included in SAM for many contractors that do not supply commercial satellite services. At a minimum, this clause should be deleted from SAM and included in a particular solicitation only in the rare instances when it is applicable.
252.225-7050	Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism	10 U.S.C. 2327 requires that entities of concern should be added to the excluded parties list. The statute does not require a separate clause on this topic.	II,III	Delete	This clause should be eliminated since the subject of subcontracting with suspended or debarred entities is covered by FAR 9.4 and the representation in FAR 52.209-5. FAR 52.209-5 adequately provides consistent direction on this topic and should not be duplicated, supplemented or contradicted by the DFARS.
252.227-7000	Non-Estoppel				These clauses are never used. All that is needed is a policy statement allowing DoD to enter into settlement agreements where patent and copyright infringement is alleged by a third party owner of a patent or copyright.
252.227-7001	Release of Past Infringement				
252.227-7002	Readjustment of Payments				
252.227-7003	Termination				
252.227-7004	License Grant				
252.227-7005	License Term		II,III	Delete	
252.227-7006	License Grant---Running Royalty				
252.227-7007	License Term--Running Royalty				
252.227-7008	Computation of Royalties				

252.227-7009	Reporting and Payment of Royalties				
252.227-7010	License to Other Government Agencies				
252.227-7011	Assignments				
252.227-7012	Patent License and Release Contract				
252.227-7020	Rights in Special Works		II,III	Delete	The delivery of data or software produced in the performance of the contract with unlimited rights is sufficient for all government purposes and needs. The transfer of ownership of the copyright in the data or software to the Government, and the requirement of indemnification by the contractor, increases government costs.
252.227-7021	Rights in Data --Existing Works		II,III	Delete	The clause is not needed. What is needed instead is policy statement which state the government acquires existing works on the same terms as the public.
252.227-7022	Government Rights (Unlimited)		II	Delete	The subject matter of this clause is fully superseded by 252.227-7013 et seq.
252.227-7023	Drawings and Other Data to Become Property of Government		II	Delete	The subject matter of this clause is fully superseded by 252.227-7013 et seq.
252.227-7024	Notice and Approval of Restricted Designs		II	Delete	The subject matter of this clause is fully superseded by 252.227-7013 et seq.
252.227-7026	Deferred Delivery of Technical Data or Computer Software		II,III	Delete	This clause is no longer relevant, given the advances and declining costs of electronic storage. The Government today can store and manage data in electronic format, and the need for the Contractor to maintain data for deferred delivery is no longer required.
252.227-7027	Deferred Ordering of Technical Data or Computer Software		II,III	Delete	The current clause is internally defective, and requires the contractor to maintain and possibly deliver data or software after contract termination, without funding. The Government is required to determine its minimum data requirements prior to contract. Requiring the contractor to maintain data and software after termination is burdensome and costly.
252.227-7030	Technical Data - Withholding of Payment	10 U.S.C. 2320	II	Delete	This clause requires withholding of 10% of the total contract price should a contractor fail to deliver technical data within the specified contractual timeframe. This clause is unnecessary. (See attached) 
252.227-7032	Rights in Technical Data and Computer Software (Foreign)		II,III	Delete	This clause is unused, outdated and superseded by data rights clauses at 52.227-14 and 252.227-7013 and 252,227-7014.
252.227-7037	Validation of Restrictive Markings on Technical Data		II,III	Delete	This clause is costly to administer and difficult to manage at the multi-tier level.
252.227-7039	Patents--Reporting of Subject Inventions		II,III	Delete	Subject invention reporting and administration are addressed in 52.227-11. The additional reporting requirements are not necessary and increase contractor costs and administrative burden.
252.231-7000	Supplemental Cost Principles Related to Independent Research and Development and Bid and Proposal Costs (Dec 1991)		I-V	Delete, and/or revise	This clause incorporates by reference the Contract Cost Principles and Procedures for IR&D and B&P at DFARS 231.205-18. Per 231.205-18(c)(iii)(C) Allowability, for a contractor's annual IR&D cost to be allowable, contractors are required to (i) comply with specific reporting requirements into the Defense Technical Information Center, and (ii) Engage in a technical interchange with a technical or operational DoD Government employee. These requirements, first implemented in 2012, and expanded further in 2016 (then modified by a Class Deviation from DPAP), have had the effect of contravening the stated objectives of the rule(s) when promulgated, by imposing additional, nonvalue added bureaucracy and reporting. (See attached) 
252.231-7000	Supplemental Cost Principles Related to Compendation for Personal Services - Fringe Benefit Costs (Dec 1991)		II-IV	Repeal/rescind the entire citation at 231.205-6(m)(1).	This clause incorporates by reference the Contract Cost Principles and Procedures for Compensation for Personal Services at DFARS 231.205-6. Per 231.205-6(m)(1), Fringe benefit costs that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable. Contractors are putting forth significant effort and incurring costs to comply with the rule implemented in 2013 which has proven to have an immaterial impact on overall fringe benefit costs. It is important to note that Industry had substantial input to the proposed rule during the promulgation process, and argued strongly against its implementation into regulation. (See attached) 
252.232-7002	Progress Payments for Foreign Military Sales Acquisitions		I-III	Revise	*See attachment at Clause 252.215-7002 for explanation.*

252.232-7004	DoD Progress Payment Rates		II	Delete and revise the FAR	Progress Payment financing provides Contractors, large and small, with the essential liquidity or cash flow to efficiently deliver the Goods and Services acquired by the USG. Presently FAR and DFARS provide different progress payment rates, which represent the percent of incurred cost that is financed by the USG, to Small Business necessitating the requirement for two regulatory clauses. (See attached)  Document
252.232-7005	Reimbursement of Subcontractor Advance Payments--DoD Pilot Mentor-Protege Program		III	Revise	Preparing separate attachments of a request for reimbursement of advance payments made to a protege firm increases the invoice preparation and submission time as well as increases the government approval time. Requiring separate attachments prevents invoice submission automation, increasing the invoice preparation costs. (See attached) 
252.232-7011	Payments in Support of Emergencies and Contingency Operations		III	Delete	DFARS 232.901 states that "FAR Subpart 32.9" does not apply when the conditions therein are listed. However, DFARS 232.908 states that the appropriate FAR Prompt Payment clause prescribed at FAR 32.908 should be included in the contract in addition to DFARS 252.232-7011. Thus, FAR 32.908 still applies when the conditions at DFARS 232.901 are met. Thus the statement that "FAR subpart 32.9, Prompt Payment, does not apply when-" needs to be qualified to state that FAR 32.908 still applies (e.g., "Except for FAR 32.908, FAR Subpart 32.9, Prompt Payment, does not apply when-").
252.232-7012	Performance-Based Payments–Whole-Contract Basis	10 U.S.C. 2307(b)	IV	Revise	Section 831 of the 2017 NDAA amended Section 2307(b) of title 10 of the United States Code to recognize a preference for Performance Based Payments (PBPs). While FAR 32.1001 recognizes a preference for PBPs, current Department of Defense policies and regulations disfavor the use of PBPs. In March 2014 DFARS 232.1004 was modified to require that DoD contracting officers must first negotiate contract financing terms with successful offerors on the basis of progress payments. Once agreement has been reached on the price using progress payments as the baseline, contracting officers may then entertain proposals from the contractor for PBPs in exchange for lower consideration in the form of a reduced price. In addition, DFARS 252.232-7012 and 7013 added the requirement for contractors to submit actual cost data with invoices, adding additional administrative burden to the process. The administrative burden of these practices have resulted in reduced use of PBPs (See attached)  Document
252.232-7013	Performance-Based Payments—Deliverable-Item Basis				
252.234-7001	Notice of Earned Value Management System (Deviation 2015-O0017)		II, III	Delete or revise	Remove CFA determination requirement in DFARS 252.234-7001. The cognizant industry process owner/subject matter expert is fully qualified to make the determination. DFARS 252.234-7001, ref. para. (a) (1) and (b) (2) - Cognizant Federal Agency (CFA) process for determination that the contractor EVMS complies with EIA-748 drives costs well in excess of benefits. Alternative: System compliance would be determined as part the Standard Surveillance Plan (SSP) or other USG review-based activity. Basis: There is no requirement for the CFA to make a determination of compliance for a contractor's procedures related to the other "business systems," as identified in DFARS 252.234.7005 Contractor Business Systems and the associated business system DFARS clauses for the accounting, cost estimating, material management and accounting system, property management, and purchasing business systems. EIA-748 has long provided industry/government with the expectations of standards for an EVMS. The release of the DoD EVMS Interpretation Guide in 2015 caused contractors to re-evaluate their existing system descriptions to address further "interpretations" of the 32 Guidelines. The practice of engaging both government agencies and contractors to review changes/updates to system descriptions has been lengthy, onerous and costly to both parties. The process of obtaining approval/acceptance letters resulting from these protracted discussions has evolved into what can be perceived as an implied requirement that drives costs to both the government and contractors.
252.234-7002	Earned Value Management System (Deviation 2015-O0017)				

252.236-7000	Modification Proposals - Price Breakdown		III	Revise	*See attached document for explanation.* 
252.236-7003	Payment for Mobilization and Preparatory Work			Revise	Onerous and unfair to the Contractor by placing many determinations at the discretion of the CO., whose determination is not subject to appeal. Unclear why 52.232-5 would not be sufficient for payments under a FFP construction contract.
252.236-7010	Overseas Military Construction--Preference for United States Firms		I	Revise	*See attached document for explanation.* 
252.239-7001	Information Assurance Contractor Training and Certification		III	Delete	This clause imposes administrative and cost burdens
252.239-7007	Cancellation or Termination of Orders		II	Delete	Redundant to requirements in FAR Part 15.
252.239-7009	Representation of Use of Cloud Computing		V	Revise	CODSIA recommends that DoD clarify that these clauses apply only in limited situations where a contractor is operating or utilizing cloud for "federal information system" purposes. DoD should consider other clauses to better inform both cloud service providers and cloud customers on their respective security and incident obligations. DoD should establish a mechanism to validate cloud offerings in the defense sector. It is not clear whether this clause (and -7010) apply only to contracts where a cloud is used for a "federal information system" or to any contract where cloud may be used by the contractor in the course of performance. As more contractors move to the cloud for many purposes, the proposition that DoD should control the right of companies to select cloud is an unworkable anachronism. The clause also attempts to impose on a using contractor various obligations that can be met only by the cloud service provider.
252.239-7010	Cloud Computing Services		III	Delete	This clause imposes administrative and cost burdens, and is difficult to manage with suppliers.
252.239-7017	Notice of Supply Chain Risk	44 U.S.C. 3542(b)	II	Revise	CODSIA urges DoD to develop supply chain screening and risk assessment measures that can be shared with participants in the defense industrial base. Contractors are uncertain whether and on what basis this authority is used.
252.242-7004	Material Management and Accounting System		I-III	Revise	*See attachment at Clause 252.215-7002 for explanation.*
252.242-7005	Contractor Business Systems		I-III	Revise	*See attachment at Clause 252.215-7002 for explanation.*
252.242-7006	Accounting System Administration		I-III	Revise	*See attachment at Clause 252.215-7002 for explanation.*
252.244-7000	Subcontracts for Commercial Items		II-IV	Eliminate section (b)	Section (b) of 252.244-7000 is open ended and vague about what may be flowed down because it is "necessary to satisfy its contractual obligation." This language is not necessary, because a prime contractor can always flow down additional requirements beyond what is required. The inclusion of this language encourages prime contractors to flow down excessive requirements to subcontractors and thus adds unnecessary cost to the government supply chain. Thus, section (b) of this clause should be eliminated.
252.244-7001	Contractor Purchasing System Administration		II,III	Delete	This clause should be eliminated because contractor purchasing system requirements are covered in the FAR, which provides adequate direction on this topic, and subjects contractors to CPSRs to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting.
252.245-7001	Tagging, Labeling, and Marking of Government-Furnished Property		II	Revise to provide greater clarity.	Clause needs to be updated to clarify type of marking because there is confusion between this clause and DFARS 252.211-7003.
252.245-7002	Reporting Loss of Government Property		II,III	Revise DFARS to establish acceptable levels of LOSS for types of property.	A lot of time, energy and money is spent on performing detailed Root Cause Analysis at the request of the Government property administrator for low dollar, low value items. The establishment of acceptable thresholds or reliance on voluntary concensus standards would provide adequate control at a reduced cost to the taxpayer.

252.245-7003	Contractor Property Management System Administration		I-III	Revise	*See attachment at Clause 252.215-7002 for explanation.*
252.246-7001	Warranty of Data		II,III	Delete	Existing provisions of FAR Part 46 are sufficient to protect the Government's interest. The additional requirements of this clause increase contractor costs without providing the Government with additional protection.
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System	Sec. 818, NDAA of FY 2012, Pub. L. 112-81, as amended.	II,III	DoD should clarify what standards or processes are to be used to qualify suppliers. Contractors should be given latitude to make risk-informed decisions not to flow down these requirements to commercial sources. DoD should be more specific in what it expects in traceability.	CODSIA agrees it is important to detect and avoid counterfeit electronics. The -7008 clause, however, does not provide sufficient clarity on what qualifies as a "contractor-approved supplier" or when and on what basis other less trustworthy sources may be used. Also, the application of the clause to non-U.S. commercial sources of in-production parts is producing strong resistance from necessary sources of supply. The costs of full compliance may exceed benefits.
252.246-7008	Sources of Electronic Parts		II, III	Revise	This clause is costly to administer and difficult to manage at the multi-tier level.
252.247-7022	Representation of Extent of Transportation by Sea				The Transportation by Sea provision and clauses should be eliminated. These provisions and clauses are based on the Cargo Preference Act of 1904, 10 U.S.C. 2631, an antiquated statute passed well before many modern forms of cargo transportation were even invented. The requirement to ship one hundred percent of cargo that will eventually be used in military equipment, even small component parts, by U.S. flag vessels imposes administrative and supply chain burdens which threaten efficient performance of Department of Defense contracts. The Congressional Research Service reports that in 1955, US-flag ships handled about 25% of foreign trade with the US; today, only 1% of private-sector commercial cargo is transported on US-flag ships, and the number of US-flag international ships has shrunk from 850 to 80 ships. SeeJohn Fritelli, Cargo Preference for U.S.-Flag Shipping, Congressional Research Service, Oct. 29, 2015. The burden placed on the DoD supply chain to use US-flag ships is significant given the realities of the commercial shipping market and the lack of US-flag ships. Additionally, the administrative reporting requirements of DFARS 252.247-7023 are not required by statute. The FAR clause on this topic (52.247-6, based on the Cargo Preference Act of 1954, 46 U.S.C. 1241(b)) presents a reasonable and efficient alternative to the burdensome DFARS requirements by only requiring fifty percent of cargo transported by sea to be carried on U.S. flag ships and eliminating a portion of the administrative requirements that are found in DFARS 252.247-7023. The 1954 law is alone sufficient to address the issues related to incentivizing the American maritime industry and reserving a sealift fleet with skilled mariners while easing the unnecessary burden on American contractors who must rely on non-U.S. vessels for shipping.
252.247-7023	Transportation of Supplies by Sea	The Cargo Preference Act of 1904 ("the 1904 Act"), 10 U.S.C. 2631	II,III	Delete	
252.247-7024	Notification of Transportation of Supplies by Sea				
252.249-7000	Special Termination Costs		III	Delete	This clause imposes administrative burdens.
252.249-7002	Notification of Anticipated Program Termination or Reduction		III	Delete	This clause imposes administrative burdens and is difficult to manage at the multi-tier level