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52.244-2 Subcontracts.

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

Subcontracts (Jun 2020)

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

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

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

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

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

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

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

(2) Is fixed-price and exceeds-

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

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

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

(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:

(End of clause)

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

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

Parent topic: [52.244](#) [Reserved]