52.202-1 Definitions (Nov 2013)

NOTE: FAR 2.201 makes this clause applicable to all prime contracts with a value exceeding the simplified acquisition threshold. It is recommended, but not required, that this clause be flowed down if it is included in the prime contract.

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

(a) The solicitation, or amended solicitation, provides a different definition;
(b) The contracting parties agree to a different definition;
(c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
(d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(End of clause)

52.203–3 Gratuities (Apr 1984)

NOTE: FAR 3.202 makes this clause applicable to all prime contracts with a value exceeding the simplified acquisition threshold except those for personal services and contracts between military departments or defense agencies and foreign governments that do not obligate DoD appropriated funds. It is recommended, but not required, that this clause be flowed down if it is included in the prime contract.

(a) The right of the Contractor/Seller to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor/Seller, its agent, or another representative—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
(2) Intended, by the gratuity, to obtain a contract or favorable treatment under an contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled...
(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if the contract under which this Order was issued uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)

NOTE: FAR 3.503-2 makes this clause applicable to all prime contracts with a value exceeding the simplified acquisition threshold. Subsection (c) of this clause requires that the clause be included in all subcontracts with a value exceeding the simplified acquisition threshold.

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

(End of clause)

Alternate I (Oct 1995). As prescribed in FAR 3.503-2, substitute the following paragraph in place of paragraph (b) of the basic clause for commercial item acquisitions above the simplified acquisition threshold.

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).
52.203-7 Anti-Kickback Procedures (May 2014)

NOTE: FAR 3.502-3 makes this clause applicable to all prime contracts with a value exceeding the simplified acquisition threshold other than commercial item contracts. Subsection (c)(5) of this clause requires that the clause, modified to omit subsection (c)(1), be included in all subcontracts with a value exceeding $150,000.

(a) Definitions.

Kickback, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Person, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

Prime contract, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor as used in this clause, means Seller or a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this clause, means any officer, partner, employee, or agent of Seller or a prime Contractor.

Subcontract or Order, as used in this clause, means a contract or contractual action entered into by a prime Contractor, Buyer, subcontractor, or Seller for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

Subcontractor employee, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from—
(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) [Reserved]

(2) When the Contractor the Seller has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor the Seller shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor Seller shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer Buyer’s Purchasing Representative may (i) offset the amount of the kickback against any monies owed by the United States Buyer under the prime contract Order and/or (ii) direct that the Prime Contractor Seller withhold from sums owed a lower-tiered subcontractor under the prime contract the amount of the kickback. The Contracting Officer Buyer’s Purchasing Representative may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government Buyer unless the Government Buyer has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor Seller shall notify the Contracting Officer Buyer’s Purchasing Representative when the monies are withheld.

(5) The Contractor Seller agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract Order which exceed $150,000.

(End of clause)

52.203–8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)

NOTE: FAR 3.104-9(a) makes this clause applicable to all prime contracts with a value exceeding the simplified acquisition threshold other than commercial item contracts. It is recommended, but not required, that this clause be flowed down if it is included in the prime contract.

(a) If the Government Buyer receives information that a contractor Seller or a person has
violated 41 U.S.C. 2102–2104, Restrictions on Obtaining and Disclosing Certain Information, the Government Buyer may—

(1) Cancel the solicitation, if the contract Order has not yet been awarded or issued; or

(2) Rescind the contract Order with respect to which—

(i) The Contractor Seller or someone acting for the Contractor Seller has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor Seller or someone acting for the Contractor Seller has engaged in conduct punishable under 41 U.S.C. 2105(a).

(b) If the Government Buyer rescinds the contract Order under paragraph (a) of this clause, the Government Buyer is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract Order.

(c) The rights and remedies of the Government Buyer specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract Order.

(End of clause)

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014)

NOTE: FAR 3.104-9(b) makes this clause applicable to all prime contracts with a value exceeding the simplified acquisition threshold other than commercial item contracts. It is recommended, but not required, that this clause be flowed down if it is included in the prime contract.

(a) The Government Buyer, at its election, may reduce the price of a fixed-price type contract Order and the total cost and fee under a cost-type contract Order by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.
(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) [Reserved]

(2) [Reserved]

(3) [Reserved]

(4) For fixed-price-incentive contracts Orders, the Government Buyer may—

(i) Reduce the contract Order target price and contract Order target profit both by an amount equal to the initial target profit specified in the contract Order at the time of contract award of the Order; or

(ii) If an immediate adjustment to the contract Order target price and contract Order target profit would have a significant adverse impact on the incentive price revision relationship under the contract Order, or adversely affect the contract Order financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract Order. The total final price established in accordance with the incentive price revision provisions of the contract Order shall be reduced by an amount equal to the initial target profit specified in the contract Order at the time of contract award of the Order and such reduced price shall be the total final contract Order price.

(5) For firm-fixed-price contracts Orders, by 10 percent of the initial Order contract price or a profit amount determined by the Contracting Officer Buyer’s Purchasing Representative from records or documents in existence prior to the date of the contract award of the Order.

(c) The Government Buyer may, at its election, reduce prime contractor’s Seller’s price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government Buyer may terminate this contract for default. The rights and remedies of Buyer specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203–12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)

NOTE: FAR 3.808(b) makes this clause applicable to all prime contracts with a value exceeding $150,000. Subsection (g)(3) of this clause requires that the clause be included in all subcontracts in excess of $150,000.
(a) Definitions. As used in this clause—

Agency means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

4. Entering into any cooperative agreement.
5. Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self–Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
2. A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
3. A special Government employee, as defined in section 202, Title 18, United States Code.