

**LOCKHEED MARTIN CORPORATION**

**CORPDOC 2A**

**FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS)  
FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A UNITED  
STATES DEPARTMENT OF DEFENSE PRIME CONTRACT**

**A. INCORPORATION OF FAR AND DFARS CLAUSES**

The FAR and DFARS clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract, and nothing in this Contract grants SELLER a direct claim or cause of action against the U.S. Government. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract. SELLER shall include in each lower-tier subcontract the appropriate flow down clauses as required by the FAR and FAR Supplement clauses included in this Contract.

**B. GOVERNMENT SUBCONTRACT**

(a) This Contract is entered into by the parties in support of a U.S. Government contract.

(b) As used in the FAR and DFARS clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Commercially available off-the-shelf (COTS) item" means a COTS item as defined in FAR 2.101.
3. "Contract" means this contract.
4. "Contracting Officer" shall mean the U.S. Government Contracting Officer for LOCKHEED MARTIN's government prime contract under which this Contract is entered.
5. "Contractor" and "Offeror" means the SELLER, which is the party identified on the face of the Contract with whom Lockheed Martin is contracting, acting as the immediate subcontractor to LOCKHEED MARTIN.
6. "Prime Contract" means the contract between LOCKHEED MARTIN and the U.S. Government or between LOCKHEED MARTIN and its higher-tier contractor who has a contract with the U.S. Government.
7. "Subcontract" means any contract placed by SELLER or lower-tier subcontractors under this Contract.

### **C. NOTES**

(a) The following notes apply to the clauses incorporated by reference below only when specified in the parenthetical phrase following the clause title and date.

1. Substitute "LOCKHEED MARTIN" for "Government" or "United States" throughout this clause.
2. Substitute "LOCKHEED MARTIN Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and LOCKHEED MARTIN" after "Government" throughout this clause.
4. Insert "or LOCKHEED MARTIN" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to SELLER to/from the Contracting Officer shall be through LOCKHEED MARTIN.
6. Insert "and LOCKHEED MARTIN" after "Contracting Officer", throughout the clause.
7. Insert "or LOCKHEED MARTIN PROCUREMENT REPRESENTATIVE" after "Contracting Officer", throughout the clause.
8. If SELLER is an international contractor, this clause applies to this Contract only if Work under the Contract will be performed in the United States or Contractor is recruiting employees in the United States to Work on the Contract.

(b) See also the clause of this Contract entitled Communication with Lockheed Martin Customer with respect to communications between SELLER and the Government.

### **D. AMENDMENTS REQUIRED BY PRIME CONTRACT**

SELLER agrees that upon the request of LOCKHEED MARTIN it will negotiate in good faith with LOCKHEED MARTIN relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LOCKHEED MARTIN may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

### **E. PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If LOCKHEED MARTIN furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that LOCKHEED MARTIN, acting on its own behalf, may modify or limit any rights the Government may have to authorize SELLER's use of such Furnished Items in support of other U. S. Government prime contracts.

## **F. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION (FAR) INCORPORATED BY REFERENCE**

The following FAR clauses apply to this Contract:

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) (Applies if this Contract exceeds the simplified acquisition threshold).

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (Applies if this Contract exceeds \$5,500,000 and the period of performance is more than 120 days. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)

FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

FAR 52.204-2 SECURITY REQUIREMENTS (AUG 1996) (Applies if the Work requires access to classified information.)

FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (Applies where SELLER will have physical access to a federally-controlled facility or access to a Federal information system.)

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2018) (Subparagraph (d)(2) does not apply. If SELLER meets the thresholds specified in paragraphs (d)(3) and (g)(2) of the clause, SELLER shall report required executive compensation by posting the information to the Government's System for Award Management (SAM) database. All information posted will be available to the general public.)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (Applies unless SELLER is furnishing commercially available off-the-shelf items.)

FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018) (SELLER shall provide LOCKHEED MARTIN copies of any reports provided under this clause which relate to the performance of this Contract.)

FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (DEC 2019) (Note 4 applies in paragraph (b). Reports required by this clause will be made to LOCKHEED MARTIN.)

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015) (Applies if this Contract exceeds \$35,000 except does not apply if this Contract is for commercial off the shelf items. Copies of notices provided by SELLER to the Contracting Officer shall be provided to LOCKHEED MARTIN.)

FAR 52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010) (Note 2 applies in paragraph (a)(1).)

FAR 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 2010) (Note 2 applies in paragraphs (a)(1) and (b).)

FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018) (Note 8 applies.)

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (Note 8 applies.)

FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (Note 8 applies.)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (Applies if this Contract is for \$150,000 or more. Note 8 applies.)

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014) (Applies if this Contract exceeds \$15,000. Note 8 applies.)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (Applies if this Contract is for \$150,000 or more. Note 8 applies.)

FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies if this Contract exceeds \$10,000. Note 8 applies.)

FAR 52.222-41 SERVICE CONTRACT ACT OF 1965 (AUG 2018) (Applies if this Contract is for services subject to the Service Contract Act. The clause does not apply if this Contract has been administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4. Note 8 applies.)

FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (JAN 2019) (Note 2 applies. In paragraph (e) Note 3 applies.)

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (Applies if this Contract exceeds \$3,500 except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item. Note 8 applies.)

FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and is to be performed in whole or in part in the United States. "Contracting Officer" means "LOCKHEED MARTIN.")

FAR 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017) (Applies if this Contract is subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.)

FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (Applies if this Contract involves hazardous material. Notes 2 and 3 apply, except for paragraph (f) where Note 4 applies.)

FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (Applies to Work containing covered radioactive material. In the blank insert "30". Notes 1 and 2 apply.)

FAR 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 2016) (Applies if the Work was manufactured with or contains ozone-depleting substances.)

FAR 52.224-3 PRIVACY TRAINING (JAN 2017) (Applies if SELLER will (1) have access to a system of records; (2) create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) design, develop, maintain, or operate a system of records. In paragraph (d), Note 6 applies.)

FAR 52.225-1 BUY AMERICAN ACT -- SUPPLIES (MAY 2014) (Applies if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)

FAR 52.225-5 TRADE AGREEMENTS (OCT 2019) (Applies if the Work contains other than U.S. made or designated country end products as specified in the clause.)

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

FAR 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (DEC 2007)

FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (Applies if SELLER is a small business concern. Note 1 applies. This clause does not apply if LOCKHEED MARTIN does not receive accelerated payments under the prime contract. Not all agencies provide accelerated payments.)

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2019)

FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017) ("Contracting Officer" means "LOCKHEED MARTIN" except in the definition of Property Administrator and in paragraphs (h)(1)(iii) where it is unchanged, and in paragraphs (c) and (h)(4) where it includes LOCKHEED MARTIN. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means "LOCKHEED MARTIN" and except in paragraphs (d)(2) and (g) where the term includes LOCKHEED MARTIN. The following is added as paragraph (n) "SELLER shall provide to LOCKHEED MARTIN immediate notice if the Government or other customers (i) revokes its assumption of loss under any direct contracts with SELLER, or (ii) makes a determination that SELLER's property management practices are inadequate, and/or present an undue risk, or that SELLER has failed to take corrective action when required.")

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006)

**G. PROVISIONS OF THE DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) INCORPORATED BY REFERENCE**

The following DFARS clauses apply to this Contract:

DFARS 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

DFARS 252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (AUG 2019) (Applies when FAR 52.203-13 applies to this Contract.)

DFARS 252.204-7009 LIMITATIONS ON THE USE AND DISCLOSURE OF THIRD PARTY CONTRACTOR REPORTED CYBER INCIDENT INFORMATION (OCT 2016) (Applies if this Contract involves services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting.)

DFARS 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019) (Applies if this Contract is for operationally critical support or for which performance will involve covered defense information. SELLER shall furnish LOCKHEED MARTIN copies of notices provided to the Contracting Officer at the time such notices are sent. SELLER shall also furnish LOCKHEED MARTIN copies of any reports SELLER receives from its lower tier subcontractors.)

DFARS 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION FOR LITIGATION SUPPORT (MAY 2016)

DFARS 252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (DEC 2019) (Copies of reports provided by SELLER under this clause will be provided to LOCKHEED MARTIN.)

DFARS 252.211-7003 ITEM UNIQUE IDENTIFICATION AND VALUATION (MAR 2016) (Applies if this Contract requires the Work to contain unique item identification." Items subject to unique item identification are identified elsewhere in this Contract. All reports required to be submitted under this clause shall be submitted to LOCKHEED MARTIN. "Government" means " LOCKHEED MARTIN" except in the definition of "issuing agency" in paragraph (a).

DFARS 252.215-7010 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND OTHER DATA THAN CERTIFIED COST OR PRICING DATA (JUL 2019) This clause applies in lieu of FAR 52.215-20. Contracting Officer means "LOCKHEED MARTIN" Paragraph (b)(ii)(E) is deleted.

DFARS 252.223-7001 HAZARD WARNING LABELS (DEC 1991) (Applies if this Contract requires the delivery of hazardous materials.)

DFARS 252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994) (Applies only if the articles furnished under this Contract contain ammunition or explosives, including liquid and solid propellants. Notes 2, 3, and 5 apply to paragraphs (g)(1)(i) and (e)(1)(ii). Note 3 applies. Delete "prime" in (g)(1)(ii) and add "and LOCKHEED MARTIN Procurement Representative." Delete in (g)(1)(ii) "substituting its name for references to the Government.")

DFARS 252.223-7003 CHANGE IN PLACE OF PERFORMANCE - AMMUNITION AND EXPLOSIVES (DEC 1991) (Applies if DFARS 252.223-7002 applies to this Contract. Notes 2 and 4 apply.)

DFARS 252.223-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999) (Applies if this Contract is for the development, production, manufacture, or purchase of arms, ammunition, and explosives or when arms, ammunition, and explosives will be provided to SELLER as Government Furnished Property.)

DFARS 252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM (JUN 2013) (Note 2 applies.)

DFARS 252.225-7001 BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (SEP 2017) (Applies if the Work contains other than domestic components. Applies in lieu of FAR 52.225-1.)

DFARS 252.225-7007 PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (DEC 2018) Applies if this contract is for an item on the United States Munitions List or the 600 series of the Commerce Control List.)

DFARS 252.225-7009 RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (DEC 2019) (Applies if the Work to be furnished contains specialty metals. Paragraph (d) is deleted.)

DFARS 252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2017)

DFARS 252.225-7021 TRADE AGREEMENTS (SEP 2019) (Applies if the Work contains other than U.S.-made, qualifying country, or designated country end products. Applies in lieu of FAR 52.225-5.)

DFARS 252.225-7048 EXPORT-CONTROLLED ITEMS (JUN 2013)

DFARS 252.225-7052 RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS AND TUNGSTEN (DEC 2019) (Applies except where an exception in paragraph (c) applies.)

DFARS 252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (APR 2019) (Applies if this Contract exceeds \$500,000. Note 2 applies to paragraph (c) the first time "Contracting Officer" appears. In subparagraph (f)(1) "Contractor" shall mean "LOCKHEED MARTIN." LOCKHEED MARTIN shall have no liability to SELLER for any incentive payment under this clause unless and until the Government provides said incentive payment to LOCKHEED MARTIN.)

DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA --NONCOMMERCIAL ITEMS (FEB 2014) (Applies in lieu of FAR 52.227-14. Applies to the extent specified in DFARS 252.227-7015.)

DFARS 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (FEB 2014) (Applies in lieu of FAR 52.227-14.)

DFARS 252.227-7015 TECHNICAL DATA -- COMMERCIAL ITEMS (FEB 2014)

DFARS 252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS - COMPUTER SOFTWARE (SEP 2016)

DFARS 252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 2016)

DFARS 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013)

DFARS 252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if this Contract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and

parts integral to a system. Contractor shall provide notifications to LOCKHEED MARTIN and the contracting officer identified to SELLER.)

DFARS 252.246-7007 CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE SYSTEM (AUG 2016) (Paragraphs (a) through (e) apply. To the extent this clause conflicts with other provisions of this contract, this clause shall prevail. In paragraph (c)(2) Note 3 applies. In paragraph (c)(6) Note 6 applies.)

DFARS 252.246-7008 SOURCES OF ELECTRONIC PARTS (MAY 2018) (Applies if this contract is for electronic parts or assemblies containing electronic parts, unless SELLER is the original manufacturer. Note 1 applies except in paragraph (d). Note 2 applies.)

DFARS 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA - BASIC (FEB 2019) (Applies in lieu of FAR 52.247-64 in all Contracts for ocean transportation of supplies. In the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence. Paragraph (f) and (g) shall not apply if this Contract is at or below the simplified acquisition threshold. Notes 1 and 2 apply to paragraph (g).)

DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000) (Applicable if this Contract meets the criteria set forth in paragraph (b) (2) (ii) of the clause. Notes 1 and 2 apply.)

DFARS 252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (MAY 2019) (Applies if this Contract exceeds the threshold at DFARS 225.870-4(c)(2)(i)(A)(1). Note 2 applies. Delete paragraph (d) (1) and the first five words of paragraph (d) (2).)

## **H. CERTIFICATIONS AND REPRESENTATIONS**

SELLER acknowledges that LOCKHEED MARTIN will rely upon SELLER certifications and representations, including representations as to business size and socio-economic status as applicable, contained in this clause and in any written offer, proposal or quote, or company profile submission, which results in award of a contract to SELLER. By entering into such contract, SELLER republishes the certifications and representations submitted with its written offer, including company profile information, and oral offers/quotations made at the request of LOCKHEED MARTIN, and SELLER makes those certifications and representations set forth below. SELLER shall immediately notify LOCKHEED MARTIN of any change of status regarding any certification or representation.

### **1. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$150,000)**

(a) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. SELLER hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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 on its behalf in connection with the awarding of this contract.

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, SELLER shall complete and submit, with its offer, to LOCKHEED MARTIN OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. SELLER need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

**2. FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters**

(a)(1) SELLER certifies, to the best of its knowledge and belief, that--

(i) SELLER and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(ii) SELLER has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

(b) SELLER shall provide immediate written notice to LOCKHEED MARTIN if, at any time prior to contract award, SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that SELLER knowingly rendered an erroneous certification, in addition to other remedies available, LOCKHEED MARTIN may terminate this contract for default.

### **3. FAR 52.222-22 Previous Contracts and Compliance Reports**

(a) SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (1) SELLER has filed all required compliance reports and (2) that representations

indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(b) Paragraph (a) applies only to the extent (1) SELLER performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

**4. FAR 52.222-25 Affirmative Action Compliance**

(a) SELLER represents: (1) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, SELLER will develop and place in operation such a written Affirmative Action Compliance Program within one-hundred twenty (120) days from the award of this Contract.

(b) Paragraph (a) applies only to the extent (1) SELLER performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.