

# VALERO SUPPLEMENT 1, GOVERNMENT CONTRACT PROVISIONS FROM FEDERAL ACQUISITION REGULATION (FAR) AND DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS)

This Valero Supplement 1, Government Contract Provisions from Federal Acquisition Regulation (FAR) and Department of Defense Federal Acquisition Regulation Supplement (DFARS) (“Valero Supplement 1”), applies to the purchase of materials and/or services by Valero and/or its affiliates (collectively or singularly, as the context requires, “Valero”) from the company (“Company” or “Subcontractor”) providing such materials and/or services under the subject contract/agreement (“Agreement” or “Subcontract”) that incorporates this Valero Supplement 1 by reference for use under a United States government prime contract (“Prime Contract”).

## I. Equal Employment Opportunity

**Company, and its contractors, shall abide by the requirements of 41 C.F.R. 60-1(a), 41 C.F.R. 60-300.5(a) and 41 C.F.R. 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**

## II. Federal Acquisition Regulation; Defense Federal Acquisition Regulation Supplement; Defense Logistics Agency Provisions; and Other Provisions

The provisions below in Sections II.A., II.B., and II.C, which are found in the Federal Acquisition Regulation (“FAR”), the Department of Defense FAR Supplement (“DFARS”), and Defense Logistics Agency (“DLA”) regulations, and elsewhere as specified, as updated from time to time and available on [www.valero.com](http://www.valero.com), are incorporated into this Valero Supplement 1 by reference with the same force and effect as if set forth below in full text, and are applicable, including any notes following the provision citation, to the Agreement along with any other provisions contained herein. Except as otherwise noted below, as necessary to give proper effect to the provisions in Sections II.A., II.B., and II.C., the following changes to these FAR, DFARS, DLA, and other provisions are made for incorporation of these provisions into the Agreement: “Contractor” or “Prime Contractor” shall mean “Company”; “Government” shall mean “Valero”; “Contracting Officer” shall mean “Valero’s Purchasing Representative”; and “Contract” or “Schedule” shall mean the “Agreement”.

Company agrees to flow down, as required, all applicable FAR, DFARS, DLA, and other provisions set forth in this Valero Supplement 1, as updated from time to time and available on [www.valero.com](http://www.valero.com), to its contractors. Company further agrees that all notifications and other communications required by these provisions shall be made through Valero’s Purchasing Representative, unless the Agreement specifically provides otherwise. The failure of Company to comply with any provision in this Valero Supplement 1 shall be a material breach of the Agreement and Valero may terminate the Agreement and/or exercise any other remedy under the Agreement, at law, or in equity, as a result of such material breach.

Unless otherwise identified herein or in the body of the Agreement, the version of the provision is the one in effect as set forth below.

Provisions incorporated by reference may be found at <http://farsite.hill.af.mil/> or <http://www.acquisition.gov>. Valero will provide copies of provisions incorporated by reference upon Company's written request.

A) FAR Provisions.

- 1) 52.202-1. Definitions (November 2013).
- 2) 52.203-3. Gratuities (April 1984). Applies if the Subcontract is above the Simplified Acquisition Threshold per FAR 2.101 ("SAT").
- 3) 52.203-6. Restrictions on Subcontractor Sales to the Government (September 2006), with Alternate I (October 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402). Applies if the Subcontract exceeds the SAT.
- 4) 52.203-13. Contractor Code of Business Ethics and Conduct (October 2015) (41 U.S.C. 3509). Applies if the Subcontract exceeds \$5,500,000 and has a performance period of more than one hundred and twenty (120) days. In altering this provision to identify the appropriate parties, in addition to disclosing to Valero, Company shall disclose all actual or suspected violations of the civil False Claims Act or of Federal criminal law to the agency Office of the Inspector General, with a copy to the Contracting Officer under the Prime Contract, which the contact information therefor will be provided by Valero upon written request.
- 5) 52.203-17. Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (April 2014). Applies if the Subcontract is over the SAT.
- 6) 52.203-19. Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).
- 7) 52.204-10. Reporting Executive Compensation and First-Tier Subcontract Awards (July 2016) (Pub. L. 109-282) (31 U.S.C. 6101 note). Company is a First-Tier Subcontractor, unless otherwise stated. Company shall timely furnish the required information to Valero for reporting, as applicable.
- 8) 52.209-6. Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (October 2015) (31 U.S.C. 6101 note). Applies if the Subcontract exceeds \$35,000 in value and is not for the acquisition of commercially available off-the-shelf ("COTS") items, as defined in FAR 2.101.
- 9) 52.209-10. Prohibition on Contracting with Inverted Domestic Corporations (November 2015). Applies if the Subcontract is for the acquisition of products or services (including construction).
- 10) 52.219-8. Utilization of Small Business Concerns (November 2016) (15 U.S.C. 637(d)(2) and (3)). Applies, consistent with FAR 52.219-9(c) and (d)(9), if the Subcontract offers further subcontracting opportunities.

- 11) 52.219-9. Small Business Subcontracting Plan (November 2016) (15 U.S.C. 637 (d)(4)). Applies, as applicable, in accordance with paragraph (d)(9) of this FAR provision, if the Subcontractor (except small business concerns) has lower-tier subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility).
- 12) 52.219-16. Liquidated Damages-Subcontracting Plan (January 1999). Applies to the Subcontract if such Subcontract incorporates FAR 52.219-9, Small Business Subcontracting Plan.
- 13) 52.222-3. Convict Labor (June 2003) (Executive Order 11755). Applies if the Subcontract is above the micro-purchase threshold, as defined in FAR 2.101, and the Subcontract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands, unless exempted by FAR 22.202(a) through (c).
- 14) 52.222-11. Prevailing Wage, Fringe Benefits in Construction Contracts. Applies if the Subcontract is for construction within the United States and is subject to the DAVIS-BACON ACT, 40 U.S.C. 3141, et seq.
- 15) 52.222-17. Nondisplacement of Qualified Workers (May 2014) (Executive Order 13495). Applies to the Subcontract to the extent set forth in paragraph (1) of FAR 52.222-17.
- 16) 52.222-19. Child Labor—Cooperation with Authorities and Remedies (October 2016) (Executive Order 13126). Applies if the Subcontract is for the acquisition of supplies that are expected to exceed the micro-purchase thresholds unless exempted by FAR 52.222-19(a).
- 17) 52.222-21. Prohibition of Segregated Facilities (April 2015). Applies where FAR 52.222-26, Equal Opportunity, applies.
- 18) 52.222-26. Equal Opportunity (September 2016). Applies if, during any twelve (12) month period, Company has been or is awarded nonexempt United States government contracts and/or subcontracts that have an aggregate value in excess of \$10,000, except for work performed outside the United States by employees who were not recruited within the United States. The mandatory language for this provision is set forth in Section I above of this Valero Supplement 1.
- 19) 52.222-35. Equal Opportunity for Veterans (October 2015) (38 U.S.C. 4212). Applies if the Subcontract is for \$150,000 or more unless exempted by rules, regulations, or orders of the United States Secretary of Labor. The mandatory language for this provision is set forth in Section I above of this Valero Supplement 1.
- 20) 52.222-36. Equal Opportunity for Workers with Disabilities (July 2014) (29 U.S.C. 793). Applies if the Subcontract is in excess of \$15,000 unless exempted by rules, regulations, or orders of the United States Secretary of Labor, so that such provisions will be binding upon each subcontractor or vendor. The mandatory language for this provision is set forth in Section I above of this Valero Supplement 1.

- 21) 52.222-37. Employment Reports on Veterans (July 2016) (38 U.S.C. 4212). Applies if the Subcontract is \$150,000 or more unless exempted by rules, regulations, or orders of the United States Secretary of Labor.
- 22) 52.222-40. Notification of Employee Rights Under the National Labor Relations Act (December 2010) (Executive Order 13496). Applies if the Subcontract exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the United States Secretary of Labor issued pursuant to section 3 of Executive Order 13496 (January 30, 2009), so that such provisions will be binding upon the Subcontractor.
- 23) 52.222-41. Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67). Applies to the Subcontract if it is subject to the Service Contract Labor Standards.
- 24) 52.222-50. Combating Trafficking in Persons (March 2015) (22 U.S.C. chapter 78 and Executive Order 13627) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 E.O. 13627). Applies to the Subcontract. Where applicable, paragraph (h) of the provision applies to any portion of the Subcontract that is for services to be performed outside the United States or for supplies, other than COTS items, acquired outside the United States, and has an estimated value of \$500,000 or more.
- 25) 52.222-51. Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.). Applies to the Subcontract if it is for exempt services.
- 26) 52.222-53. Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services – Requirements (May 2014) (41 U.S.C. chapter 67). Applies to the Subcontract if it is for exempt services.
- 27) 52.222-54. Employment Eligibility Verification (October 2015). The provision, including its paragraph (e), applies if the Subcontract: (1) is for (i) commercial or noncommercial services (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); or (ii) construction; (2) has a value of more than \$3,500; and (3) includes work performed in the United States.
- 28) 52.222-55. Minimum Wages Under Executive Order 13658 (December 2015). Applies if the Subcontract, regardless of dollar value, 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.
- 29) 52.222-60. Paycheck Transparency (Executive Order 13673) (October 2016). Applies if the Subcontract exceeds \$500,000 and to the extent set forth in paragraph (f) of FAR.

- 30) 52.222-62. Paid Sick Leave (Executive Order 13706) (January 2017). Applies to the extent set forth in paragraph (m) of FAR 52.222-62.
- 31) 52.223-6. Drug Free Work Place. Applies if the Subcontractor is to perform work at Valero's facilities or a United States government location.
- 32) 52.223-18. Encouraging Contractor Policies to Ban Text Messaging while Driving (August 2011) (Executive Order 13513). Applies if the Subcontract exceeds the micro-purchase threshold, as defined in FAR 2.101.
- 33) 52.224-3. Privacy Training (Jan 2017). Alternate I (Jan 2017).
- 34) 52.225-5. Trade Agreements (October 2016).
- 35) 52.225-13. Restrictions on Certain Foreign Purchases (June 2008) (Executive Orders, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- 36) 52.226-6. Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Applies if the Subcontract is greater than \$25,000 with subcontractors or suppliers, at any tier, who will perform, under the Subcontract, the provision, service, or sale of food in the United States.
- 37) 52.247-64. Preference for Privately – Owned U.S. Flag Commercial Vessels (February 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Applies to the Subcontract unless it is of a type described in paragraph (e)(4) of FAR 52.247-64.

## B) DFARS Provisions

If the Agreement is a first-tier subcontract under a Prime Contract for the acquisition of commercial items for the Department of Defense ("DoD"), the following provisions apply:

- 1) 252.203-7000. Requirements Relating to Compensation of Former DoD Officials (September 2011).
- 2) 252.203-7003. Agency Office of the Inspector General (December 2012).
- 3) 252.203-7005. Representation Relating to Compensation of Former DoD Officials (November 2011).
- 4) 252.204-7012. Safeguarding of Unclassified Controlled Technical Information (November 2013). Applies to the Subcontract as applicable.
- 5) 252.205-7000. Provision of Information to Cooperative Agreement Holders (December 1991).

- 6) 252.209-7001. Disclosure of Ownership or Control by the Government of a Terrorist Country (January 2009). Applies if the Subcontract is valued at \$100,000 or more. Company's or any of its contractor's disclosure that the government of a terrorist country has a significant interest in Company or its contractor or a subsidiary of either shall be provided to Valero promptly, and as directed through agency channels to the address at DFARS 209.104-1(g)(i)(C). In the event of such a disclosure, the Agreement may be canceled by Valero.
- 7) 252.209-7002. Disclosure of Ownership or Control by a Foreign Government (June 2010). Applies to the Subcontract as applicable.
- 8) 252.219-7003. Small Business Subcontracting Plan (DoD Contracts) (October 2014) Applies, as applicable, if FAR 52.219-9, Small Business Subcontracting Plan, is in this Valero Supplement 1.
- 9) 252.225-7021. Trade Agreements (October 2013). Applies to the Subcontract as applicable.
- 10) 252.226-7001. Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (September 2004). This provision, including its paragraph (g), applies to the Subcontract if it exceeds \$500,000.
- 11) 252.227-7013. Rights in Technical Data – Noncommercial Items (February 2014). Applies to the Subcontract as applicable.
- 12) 252.227-7015. Technical Data – Commercial Items (February 2014). Applies to the Subcontract as applicable.
- 13) 252.227-7037. Validation of Restrictive Markings on Technical Data (June 2013). Applies to the Subcontract as applicable.
- 14) 252.247-7003. Pass – Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer (June 2013). This provision, including its paragraph (c), applies if the Subcontract is with a motor carrier, broker, or freight forwarder.
- 15) 252.247-7023. Transportation of Supplies by Sea (April 2014). Applies to the Subcontract if it is for a type of supply described in paragraph (b)(2) of FAR 252.247-7023, including a subcontract for commercial items, (1) where the Subcontract exceeds the SAT, then FAR 252.247-7023, including its paragraph (h), applies; or (2) where the Subcontract is at or below the SAT, then the FAR 252.247-7023 paragraphs (a) through (e) and (h) apply.
- 16) 252.247-7024. Notification of Transportation of Supplies by Sea (March 2000). Applies, including paragraph (b) of this provision, to the Subcontract as applicable.

### C) DLA Provisions; Other Provisions

- 1) Defense Logistics Agency (“DLA Provisions”). There are no DLA Provisions currently applicable.
- 2) Other Provisions.
  - a) Suspension or Debarment. If Company was suspended, debarred, or ineligible for receipt of contracts with United States government agencies or in receipt of a notice of proposed debarment from any United States government agency at the time Valero entered into the Prime Contract, the Agreement is voidable at the option of Valero. Company shall promptly notify Valero of such notices or determinations.
  - b) Comptroller General Examination of Record. If the Agreement is in excess of the SAT and does not contain the provision at FAR 52.215-2, Audit and Records – Negotiation, Company shall comply with the provisions of this paragraph (b).
    - i) Valero, the Comptroller General of the United States, or an authorized representative of Valero or the Comptroller General of the United States, shall have access to and right to examine any of Company’s directly pertinent records involving transactions related to the Prime Contract.
    - ii) Company shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until three (3) years after final payment under the Agreement or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, or the other clauses of the Agreement. If the Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement or such other longer period of time specified in the other clauses of the Agreement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to the Agreement shall be made available until such appeals, litigation, or claims are finally resolved.
    - iii) As used in this paragraph, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require Company to create or maintain any record that Company does not maintain in the ordinary course of business or pursuant to a provision of law.
  - c) Compliance with Laws Unique to United States Government Contracts. Company agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain United States government contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

- d) Reporting Fraud, Waste, or Abuse. Notwithstanding anything to the contrary contained in the Agreement or in any separate confidentiality agreement or non-disclosure agreement between Valero and Company related to such Agreement, nothing contained herein or therein shall prohibit or restrict Company from lawfully reporting information regarding fraud, waste, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

### III. Combating Slavery and Human Trafficking

Valero has adopted a policy prohibiting slavery and human trafficking and is committed to complying with applicable laws prohibiting such exploitation. In addition to complying with any requirements set forth in FAR 52.222-50, Combating Trafficking in Persons, referenced above, Company shall not use and shall prohibit its employees and contractors from the use of forced, bonded (including debt bondage) or indentured labor, slavery, and/or trafficked persons, and shall not engage in the trafficking of persons. This includes transporting, harboring, recruiting, transferring, or receiving vulnerable persons by means of threat, force, coercion, abduction, or fraud for the purpose of exploitation.

Company shall adopt a policy prohibiting slavery and human trafficking and notify its employees and contractors of such policy and the actions that will be taken for violations. Such actions for employees may include, but are not limited to, removal from the subject contract, reduction in benefits, or termination of employment. Such actions for contractors may include, but are not limited to, termination of the contract.

Company shall notify Valero and the Inspector General of the Department of Logistics Agency of any credible information it receives from any source that alleges an employee or contractor has engaged in conduct that violates FAR 52.222-50, Company's policy prohibiting slavery and human trafficking, or any applicable laws prohibiting such exploitation. Company agrees to cooperate fully with any investigation or inquiry into any such alleged violation or conduct, including, but not limited to (i) disclosing information to United States government investigators sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct; (ii) providing timely and complete responses to United States government auditors' and investigators' requests for documents; (iii) cooperating fully in providing reasonable access to Company's facilities and staff to allow United States government agencies to conduct audits, investigations, and/or other actions to ascertain compliance with applicable laws and regulations establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; (iv) protecting all employees suspected of being victims of or witnesses to prohibited activities under the policy or any applicable laws; and (v) not preventing or hindering the ability of its employees from cooperating fully with United States government.

In addition to any other remedies available to Valero, Company's failure to comply with the foregoing requirements may result in Valero requiring Company to remove an employee or contractor from performance under the Agreement, requiring Company to terminate a contract or subcontract, suspension of payments under the Agreement until Company has taken appropriate remedial action, or termination of the Agreement for default or cause.