

CUSTOMER CONTRACT REQUIREMENTS
Lethality Test and Analysis
CUSTOMER CONTRACT DI-SC-18-63

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.227-11 Patent Rights -- Ownership by the Contractor (MAY 2014). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization. In this clause, "Contractor" means Contractor, references to the Government are not changed and the subcontractor has all rights and obligations of the Contractor in the clause.

2. DoD FAR Supplement Clauses DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted.

252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting (OCT 2016). This clause applies if the Contract is for operationally critical support or where performance will involve a covered contractor information system. The term "contractor" retains its original meaning wherever the word is not capitalized. In the terms "Contractor attributional/proprietary information," "Contractor information system" and "covered contractor information system," the term "contractor" also retains its original meaning. In paragraph (b)(2), the applicable security standard that applies to this Contract is NIST SP 800-171, Revision 1. In paragraphs (d) and (g), "Contracting Officer" shall mean "Contracting Officer or Buyer." In paragraph (m)(2), the term "prime Contractor" retains its original meaning. In accordance with paragraph (m)(2)(i), Seller shall notify Buyer when submitting a request to the Contracting Officer to vary from NIST SP 800-171, Revision 1. Reporting to Buyer in accordance with (m)(2)(ii) shall be accomplished via abuse@Boeing.com with a copy to the Buyer's Authorized Procurement Representative. The Boeing 1st tier subcontractor promptly shall report lower tier subcontractor information it receives.

Seller represents and warrants that (i) it is in compliance with the requirements of DFARS Clause 252.204-7012 as modified by the preceding paragraph, or (ii) that, pursuant to paragraph (b)(2)(ii)(B), it has submitted a request applicable to this Contract for a variance from the requirements of NIST SP 800-171, Revision 1 to the US Government Contracting Office and that Seller's request for such variance was approved by an authorized representative of the DoD CIO.

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (OCT 2015). This clause, including this paragraph (q), applies if, in performance of this contract, Seller personnel are supporting U.S. Armed Forces deployed outside the United States in (1) contingency operations; (2) peace operations consistent with Joint Publication 3-07.3; or (3) other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

252.225-7043 Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States (JUN 2015). This clause applies only if this contract requires Seller to perform or travel outside the United States and Seller is not (1) a foreign government, (2) a representative of a foreign government, or (3) a foreign corporation wholly owned by a foreign government.

252.227-7013 Rights In Technical Data -- Noncommercial Items (FEB 2014). This clause applies when technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from Seller or Seller's subcontractors for delivery to the Government.

3. Prime Contract Special Provisions

The following prime contract special provisions apply to this purchase order

DI-SC-18-63 Special Provisions DI-SC-18-63 Special Provisions .

A. RIGHTS IN TECHNICAL DATA AND COPYRIGHTS

(1) General

Rights in technical data under this agreement shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013, Rights in Technical Data -- Noncommercial Items and related clauses in DFARS Part 252.227. With respect to both Unlimited and Government purpose license rights provided for in those regulations, the parties acknowledge that in the Prime Contract, the Government agrees that it shall obtain such rights pursuant to that agreement, and any subcontracts issued thereunder, only to the extent that its financial contributions toward the development of the technical data is equal to or greater than 50% of the total costs of such development.

Seller reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of Seller. Seller grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Agreement, and to authorize others to do so.

In the event Data, defined as recorded information, regardless of form, the media on which it may be recorded, or the method of recording, including, but not limited to, data of a scientific or technical nature, computer software, and documentation thereof, is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Contract, the Government, Dynetics Boeing, or Seller receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works, but only for the purpose of carrying out that its responsibilities under this Contract.

Seller is responsible for affixing appropriate markings indicating the rights of Seller and the Government on all data and technical data delivered under this Contract.

(2) Data First Produced by Dynetics, Buyer, and/or the Government

As to Data first produced by Dynetics, Buyer, or the Government in carrying out their responsibilities under the Prime Contract and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence for a period of five (5) years after the development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of Dynetics, Buyer, or the Government for the purposes of this Contract only.

(3) Dynetics, Buyer, or Government Prior Technology

In the event it is necessary for Dynetics, Buyer, or the Government to furnish Seller with Data which existed prior to, or was produced outside of this Contract, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by Seller only for the purpose of carrying out Seller's responsibilities under this Contract. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreement by Seller and/or their subcontractors. Upon completion of activities under the Contract, such Data will be disposed of as requested by Dynetics, Buyer, or the Government.

(4) Seller's Prior Technology

In the event it is necessary for Seller to furnish Dynetics, Buyer, or the Government with Data which existed prior to, or was produced outside of this Contract, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by Dynetics, Buyer, or the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out Dynetics', Buyer's, or the Government's responsibilities under this Contract. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors, Dynetics, Buyer, or contract employees. With respect to the use of such technical data or software by other Government Contractor organizations, Seller may offer to license such rights for use exclusively in the performance of Government Contracts, on reasonable terms and conditions under a non-exclusive license without the right to sub-license. Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this Contract to Dynetics, Buyer, other organizations, or the Government. Upon completion of activities under the Contract, such Data will be disposed of as requested by Seller.

(5) Oral and Visual Information

If information which Seller considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Government, Buyer, or Dynetics, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to the Government, Buyer, or Dynetics within 10 calendar days after such oral or visual disclosure, or the Government, Buyer, or Dynetics shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information.

(6) Disclaimer of Liability

Notwithstanding the above, the Government, Buyer, and Dynetics shall not be restricted in, nor incur any liability for, the disclosure and use of:

(a) Data not identified with a suitable notice or legend as set forth in this clause nor

(b) Information contained in any Data for which disclosure and use is restricted under this clause; if such information is or becomes generally known without breach of the above, is known or is generated by the Government, Buyer, or Dynetics independently of carrying out responsibilities under this Seller, is rightfully received from a third party without restriction, or is included in Data which Seller has, or is required to furnish to the Government without restriction on disclosure and use.

(7) Marking of Data

Any Data received or delivered under this Agreement, by the Government, Dynetics, Buyer, or Seller, shall be marked with a suitable notice or legend.

(8) Lower Tier Agreements

Seller shall include the provisions of this clause suitably modified to identify the parties, in all subcontracts, lower tier agreements, regardless of tier, for experimental, development, or research work performed under this Contract.

B. PATENT RIGHTS

(1) Definitions and FAR Clause

Patent Rights for work funded by this Contract shall be as specified in FAR 52.227-11 ("Patent Rights- Ownership by the Contractor (DEC 2007)"), which is hereby incorporated by reference with the following modifications:

As appropriate, replace "Contractor" with "Seller" throughout; replace "Contracting Officer", "the agency" and "the Federal Agency" with "Buyer" throughout.

Add the following to Sub clause (b) "Contractor's rights":

Government Employee Inventions. The parties agree that ACC-NJ-ET, on behalf of the U.S. Government shall have the initial option to retain title to each Subject Invention made only by its employees. The parties acknowledge that in the prime contract, ACC-NJ-ET has a duty to promptly notify Dynetics, if needed by the subcontractor for use in the contract. Dynetics will notify Seller, through Boeing, upon ACC-NJ-ET making this election, and in the event that ACC-NJ retains title to said Subject Inventions, further, the parties acknowledge that in the prime contract, ... ACC-NJ-ET agrees to timely file patent applications thereon at its own expense and agrees to grant to Dynetics, and Dynetics will grant to Buyer, and Buyer will grant to Seller, a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world. ACC-NJ-ET may release the rights provided for by this paragraph to its employee inventors subject to a license in Dynetics, Buyer, and Seller, as described above.

Joint Employee Inventions. The parties agree that ACC-NJ-ET, on behalf of the U.S. Government shall have the initial option to retain title to each Subject Invention Made jointly by or among Buyer, Seller, Dynetics, and/or Government employees. The parties acknowledge that in the prime contract, ACC-NJ-ET has a duty to promptly notify Dynetics upon making this election, and if needed by the subcontractor for use in the contract, Dynetics will notify Seller, through Buyer, and in this situation, Seller will work directly with the ACC-NJ-ET according to the Prime Contract.

In the event that ACC-NJ-ET elects to retain title to such joint Subject Invention, Seller agrees to assign to ACC-NJ-ET whatever right, title and interest Seller has in and to such joint Subject Invention. ACC-NJ-ET agrees to timely file patent applications on such Subject Invention at its own expense and agrees to grant to the Seller a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world.

(2) Patent Reports

Seller shall file Invention (Patent) Reports as of the close of the performance year and at the end of the term for this Contract. Annual reports are due thirty (30) calendar days after the expiration of the final performance period. Seller is required to use the DD Form 882, Report of Inventions and Subcontracts, to file an invention report. Negative reports are also required. Seller shall submit the original and one copy to Buyer.

(3) Final Payment

Final payment cannot be made, nor can this Contract be closed out, until Seller delivers to Buyer all disclosures of subject inventions required by this Contract, an acceptable final report pursuant to the article entitled "Reports", and all confirmatory instruments.

(4) Cooperation

The Government, the Prime, Dynetics, Buyer and Seller shall keep the others informed as to the status of joint patent matters. The Government, the Prime, Dynetics, Buyer, and Seller shall each reasonably cooperate with and assist the others at its own expense in connection with such activities, at the other Party's request during the term of this Agreement.

(5) Lower Tier Agreements

Seller shall include this clause, suitably modified, to identify the parties, in all subcontracts or lower tier agreements.

regardless of tier, for experimental, developmental, or research work performed under the Contract.

C. FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

The following applies in addition to the Trade Control Compliance clause of the General Provisions.

(1) Export Control

(a) Export Compliance.

Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the Parties shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

(b) Flow down.

Seller shall include this clause suitably modified, to identify all Parties, in all subcontracts or lower tier agreements. This Clause shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

D. COUNTERFEIT WORK

(1) The following definitions apply to this clause:

- a. "Counterfeit Work" means product or material that is or contains unlawful or unauthorized reproductions, substitutions, or alterations that have been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used work represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.
- b. "Suspect Counterfeit Work" means product or material for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the work part is authentic.

(2) Seller shall not deliver Counterfeit Work or Suspect Counterfeit Work under this Agreement.

(3) Seller shall only purchase products to be delivered or incorporated as material to Buyer directly from an Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distribution chain. Products or materials shall not be acquired from an independent distributor or broker unless Buyer has provided prior written approval.

(4) Seller shall immediately notify Buyer with the pertinent facts if the Seller becomes aware or suspects that it has furnished Counterfeit Work or Suspected Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of products or materials to the applicable OCM/OEM.

(5) This clause applies in addition to any quality provision, specification, statement of work, or other provision provided in this Agreement addressing authenticity of work. To the extent that such provisions conflict with this clause, this clause shall prevail.

(6) If Counterfeit Work or Suspected Counterfeit Work is delivered under this Contract, Seller shall at its own expense, promptly replace such Counterfeit Work or Suspected Counterfeit Work with genuine work conforming to the requirements of this Contract. Notwithstanding any other provision in this Agreement, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Work or Suspected Counterfeit Works including without limitation, Buyer's costs of removing Counterfeit Work, of installing replacement products or materials, of any testing necessitated assessed to Buyer as a result of the Counterfeit Work.

(7) Seller shall participate in monitoring the Government Industry Data Exchange Program (GIDEP) and shall act upon GIDEP reports which affect product or material delivered to Buyer. When Suspect Counterfeit Work or Counterfeit Work

associated with this Contract is discovered, Seller shall submit a GIDEP Report and shall ensure Suspect Counterfeit Work or Counterfeit Work is not delivered to Buyer.

(8) Seller shall include this clause in all lower tier subcontracts for the delivery of items that will be included or furnished as product or material to Buyer.

E. SECURITY

(1) Work by Dynetics, Buyer, and Seller under Ordnance Technology Initiative Agreements pursuant to this Contract may involve access to information classified as “Confidential”, “Secret”, or “Top Secret”. The Parties and their employees who work on such Ordnance

Technology Initiative Agreements shall comply with (1) the Security Agreement (DD Form 254), including the National Industrial Security Program Operation Manual (DOD 5220.22M) and (2) any revisions to that manual that may be issued. During the course of this Contract the Parties may determine that information developed under this Contract and/or the Government pursuant to this Agreement shall be treated as classified. Such information shall be classified in accordance with DOD 5220.22M.

Seller will be responsible for providing a copy of any Subcontract Security Classification Specification (DD Form 254) to lower tier awards if deemed necessary.

(2) In the event any effort under this Contract involves a classified effort, the following Department of Defense Directives, ARDEC Clauses, and Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) clauses by reference, and local clauses will be incorporated with the same force and effect as if they were given in full text.

(3) The following is a snapshot of key regulatory documents, policies, regulations, etc. applicable to this Contract at time of award.

- a. DoD 5200.1-R Information Security Regulation, 7 Jan 97
- b. DoD 5200.2-R Personnel Security Regulation, Jan 87
- c. DoDD 5220.22 National Industrial Security Program, 28 Feb 06
- d. DoDI 5200.01, Information Security Program and Protection of Sensitive Compartmented Information, 9 Oct 08
- e. DoD 5400.7-R, DOD Freedom of Information Act, Sept 98
- f. DODD 2000.12, Antiterrorism Program, 18 Aug 03
- g. ARDEC Clause 68, Identification of Contractor Employees (requirement is only applicable to contractor employees working on Picatinny Arsenal)
- h. ARDEC Clause 18, Physical Security Standards for Sensitive Items (Required when AA&E apply)
- i. ARDEC Clause 70, (FOUO) Release of Information Research and Development (reference FAR 2.101)
- j. FAR Clause 4.402, Safeguarding Classified Information Within Industry
- k. FAR Clause 52.204-2, Security Requirements, Aug 1996
- l. DFAR Clause 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System May 2014

(4) Upon conclusion of this Contract, Seller shall

- a. Return ALL classified received or generated under this Contract
- b. Destroy all of the classified; or,
- c. Request retention for a specified period of time

(5) The security level of this Contract is SECRET unless otherwise notified by Buyer and/or the Government.

F. ANTTERRORISM (AT)/OPERATIONS SECURITY (OPSEC):

(1) AT Level I Training. If the Contract requires Seller employees with an area of performance within a DOD installation, facility or area, all Seller employees, to include subcontractor employees requiring access to DOD installations, facilities and controlled access areas shall complete AT Level I awareness training within 30 calendar days after effective date of the Contract. Seller shall submit certificates of completion for each affected employee and subcontractor employee, to Buyer within 15

calendar days after completion of training by all employees and subcontractor personnel. AT level I awareness training is available at the following website: <https://atlevel1.dtic.mil/at>.

(2) Access and General Protection/Security Policy and Procedures. If the Contract requires Seller employees with an area of performance within an DOD installation, facility or area, Seller, and all associated sub-contractors employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). Seller shall also provide all information required for background checks to meet installation access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. Seller's or Seller's subcontractor's workforce must comply with all personal identity verification requirements as directed by DOD, HQDA and/or local policy. In addition to the changes otherwise authorized, should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in Seller's security matters or processes.

(3) AT Awareness Training for Seller Personnel Traveling Overseas. If the Contract requires US based Seller employees and associated sub-contractor employees to make available and to receive government provided area of responsibility specific AT awareness training as directed by AR 525-13. Specific area of responsibility training content is directed by the combatant commander with the unit ATO being the local point of contact.

(4) iWATCH Training. If the Contract requires Seller employees with an area of performance within a DOD installation, facility or area, Seller and all associated subcontractors shall brief all employees on the local iWATCH program (training standards provided by the requiring activity ATO). This local developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within 30 calendar days of the contract and within 30 calendar days of new employees commencing performance with the results reported to the AOR NLT 15 calendar days after contract award.

(5) Seller Employees Who Require Access to Government Information Systems. Seller employees with access to a government info system must be registered in the ATCTS (Army Training Certification Tracking System) at commencement of services, and must successfully complete the DOD Information Assurance Awareness prior to access to the IS and then annually thereafter.

(6) If the Contract requires an OPSEC Standing Operating Procedure/Plan, Seller shall develop an OPSEC Standing Operating Procedure (SOP)/Plan within 60 calendar days of contract award, to be reviewed and approved by the responsible Government OPSEC officer, per AR 530-1, Operations Security. This SOP/Plan will include the government's critical information, why it needs to be protected, where it is located, who is responsible for it, and how to protect it. In addition, Seller shall identify an individual who will be an OPSEC Coordinator. The Ordnance Technology Initiative Recipient will ensure this individual becomes OPSEC Level II certified per AR 530-1.

(7) If the Contract requires OPSEC Training, per AR 530-1, Operations Security, new Seller employees must complete Level I OPSEC training within 30 calendar days of their reporting for duty. All Seller employees must complete annual OPSEC awareness training.

(8) If the Contract requires Information assurance (IA)/information technology (IT) training, all Seller employees and associated sub-contractor employees must complete the DoD IA awareness training before issuance of network access and annually thereafter. All Seller employees working IA/IT functions must comply with DoD and Army training requirements in DoDD 8570.01, DoD 8570.01-M and AR 25-2 within six months of employment.

(9) If the Contract requires information assurance (IA)/information technology (IT) certification, per DoD 8570.01-M , DFARS 252.239.7001 and AR 25-2, Seller employees supporting IA/IT functions shall be appropriately certified upon contract award. The baseline certification as stipulated in DoD 8570.01-M must be completed upon Contract award.

(10) If the Contract requires Seller personnel to accompany US Armed Forces deployed outside the US in contingency operations; humanitarian or peacekeeping operations; or other military operations or exercises, when designated by the combatant commander, DFARS Clause 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States is applicable.

(11) If the Contract requires Performance or Delivery in a Foreign Country, DFARS Clause 252.225-7043, Antiterrorism/Force Protection for Defense Contractors Outside the US is applicable. This clause applies to both contingencies and non-contingency support. The key AT requirement is for non-local national Seller personnel to comply with theater clearance

requirements and allows the combatant commander to exercise oversight to ensure the Ordnance Seller's compliance with combatant commander and subordinate task force commander policies and directives.

G. NONTRADITIONAL DEFENSE CONTRACTOR PARTICIPATION

Seller shall identify any lower tier subcontractor or vendors directly supporting this Contract that meets the following definition of a "Nontraditional Defense Contractor":

According to 10 U.S.C. § 2371b, Section 815 of the 2016 National Defense Authorization Act, P.L. 114-92, "Nontraditional Defense Contractor" is defined as follows:

A nontraditional defense contractor (NDC) means an entity that is not currently performing and has not performed, for at least the one-year period preceding the issue date of the Request for Project Proposals, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

During the period of performance of the Contract, Seller shall provide a "Warranties and Representations for Nontraditional Defense Contractors" (Attachment 1 to the CCR) from each Nontraditional defense subcontractor or supplier directly supporting the Contract. Provide notice and any signed warrant from subcontractors to Buyer's Authorized Procurement Representative. The signed attachment must be provided to Buyer within 20 days of the issuance of the Contract.