

CUSTOMER CONTRACT REQUIREMENTS
ARPA-E Open Ideas Plus Up
CUSTOMER CONTRACT DE-AR0000692

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.

52.227-1 Authorization and Consent Basic (JUL 1995), Alternate I (APR 1984) .

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$100,000.

2. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

1 Requirements .

These requirements consist of the Department of Energy (DOE) Financial Assistance Regulations, 2 CFR Part 200, as amended by Part 910, available at <http://eCFR.gov>, and selections from Attachments 1-6 of the Cooperative Agreement between Boeing and the Department of Energy.

10 Reporting Requirements .

Special Status Reports

The Supplier is required to report the following events to Boeing who will convey to ARPA-E:

1. Any notices or claims of patent or copyright infringement arising out of or relating to the performance of the ARPA-E Award;
2. Refusal of a Subrecipient to accept flowdown requirements;
3. Violations of federal, state, and municipal laws arising out of or relating to work under the Award;
4. Any improper claims or excess payments arising out of or relating to work under the Award;
5. Potential or actual violations of the cost share requirements under the Award;
6. Potential or actual bankruptcy/insolvency of the Parties;
7. Under investigation for, or convicted of, violation of U.S. export control laws and/or regulations arising out of or relating to the work under the Award;
8. Any fatality or injuries requiring hospitalization arising out of or relating to work under the Award;
9. Any verbal or written notice of violation of any environmental, health, or safety laws and regulations arising out of or relating to the work under the Award;

10. Any event which is anticipated to cause a significant schedule slippage or cost increase;
11. Any damage to Government furnished property, or property acquired with, project funding by the Subrecipient, valued in excess of \$25,000;
12. Any incident arising out of or relating to work under the Award that has the potential for high visibility in the media.

Annual Property Inventories

The subrecipients must submit an annual inventory of Government-furnished property and property acquired with project funding sufficient for Boeing to complete SF-428A, available at http://www.whitehouse.gov/omb/grants_forms. The inventory must include a description of the property, tag number, acquisition date, and acquisition cost, if purchased with project funds. The location of property should be listed under the Comments section. Any property with a fair market value of \$5,000 or less (per item) may be omitted from the inventory.

Subaward/Subcontract Reports

Subawardees are required to report the conclusion of any subawards or subcontracts at any tier containing a patent rights clause. The Subawardee must identify the Subrecipient or Subcontractor, provide a copy of the patent rights clause, briefly describe the work to be performed under subaward or subcontract, and state the dates of award and estimated completion.

Software Deliverable Submission

The Subawardee must submit all software deliverables created under this Award, as well as any accompanying documentation or manuals. The following must be delivered: source code, the executable object code and the minimum support documentation needed by a competent user to understand and use the software and to be able to modify the software in subsequent development efforts.

Each software deliverable and its manual must be accompanied by a completed DOE Form 241.4 "Announcement of U.S. Department of Energy Computer Software," available at <http://www.osti.gov/estsc/241-4pre.jsp>.

Confidential Information and Data

Subawardees are required to mark confidential information and data in accordance with this guidance. Failure to properly mark confidential information and data may result in its public disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. § 552) or otherwise.

Note: Please be aware that documents related to your award may be requested under the FOIA.

Protected Data

If the Award includes a "Rights in Data - Programs Covered Under Special Data Statutes" clause in Attachment 2, the Prime Recipient may mark data that qualifies as "Protected Data" with the legend set forth in that clause.

Other Confidential Information and Data

The Subawardee must properly mark any documents containing trade secrets or commercial/financial information that is privileged or confidential other than technical data or computer software. Marking of technical data and computer software is addressed in the "Rights in Data" Clause of Attachment 2.

- The cover page must be marked with the following wording and identify the specific pages containing such information:

NOTICE OF RESTRICTION ON DISCLOSURE AND USE OF DATA

Pages [] of this document may contain trade secrets or commercial or financial information that is

privileged or confidential and exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

The header and footer of each page containing such information must be marked with the following wording: "May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure."

Each line and paragraph containing such information must be marked with double brackets or other clear identification, such as highlighting.

- Ensure that all e-mails containing protected information are categorized as "confidential." (Learn how to mark a message confidential in Outlook: <http://office.microsoft.com/en-us/outlook-help/mark-a-message-as-private-personal-or-confidential-HP005242880.aspx>).

PROTECTED PERSONALLY IDENTIFIABLE INFORMATION

The Subawardee should not include any Protected Personally Identifiable Information (Protected PII) in their submissions. Protected PII is defined as any data that, if compromised, could cause harm to an individual such as identify theft. Protected PII includes:

- Social Security Numbers in any form;
- Place of Birth associated with an individual;
- Date of Birth associated with an individual;
- Mother's maiden name associated with an individual;
- Biometric record associated with an individual;
- Fingerprint;
- Iris Scan;
- DNA;
- Medical history information associated with an individual;
- Medical conditions, including history of disease;
- Metric information, e.g., weight, height, blood pressure;
- Criminal history associated with an individual;
- Ratings;

- Disciplinary actions;
- Financial information associated with an individual;
- Credit card numbers; and
- Security clearance history or related information (not including actual clearances held).

Research Performance Progress Reports

Every quarter, Boeing is required (and Subawardees are required to support) the submission of a Research Performance Progress Report for the project – i.e., the entirety of work performed by the Prime Recipient, Subrecipients, and contractors – to ARPA-E through ARPA-E's Energy Program Information Center (ePIC).

Intellectual Property Reporting

Boeing is required to report the following to DOE Patent Counsel: (on behalf of subawardees) Disclose subject inventions, including anticipated uses and sales within 6 months of conception or first actual reduction to practice whichever occurs first under the award, and before sale, public use, or public disclosure of the invention.

Elect (or decline) to retain title to a subject invention – no later than 8 months after disclosing the subject invention to ARPA-E/DOE through iEdison or 60 days prior to any statutory deadline, whichever is earlier.

Disclose the filing of any U.S. or foreign patent applications for a subject invention including the filing date, patent application number, and title.

An initial patent application must be filed with the U.S. Patent and Trademark Office (USPTO) within one year after electing to retain title, but prior to any statutory deadline.

Disclose the patent number and issue date for any patent issued for a subject invention.

Lobbying Activities Reporting

The Subrecipients are required to complete SF-LLL, “Disclosure of Lobbying Activities” (<http://www.whitehouse.gov/sites/default/files/omb/grants/sflllin.pdf>), if any non-Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the Award.

15-16 Government Property .

CLAUSE 15. PROPERTY TRUST RELATIONSHIP AND INSURANCE COVERAGE

Property acquired in whole or in part with Federal funds under this award may not be encumbered in any way without the written permission of Boeing, who may require the recording of liens or other appropriate notices of record such property. The Supplier will ensure full replacement insurance coverage for such property.

Federally-owned property provided under the award need not be insured unless required by the terms and conditions of this Award.

CLAUSE 16. PROPERTY – SUPPLIES AND EQUIPMENT

a. Supplies

Boeing takes title to any supplies acquired in whole or in part with Federal funds under the Award.

If the total aggregate value of unused supplies is \$5,000 or less at the termination, discontinuation or completion of the project or program Boeing may retain the unused supplies with no further obligation to ARPA-E.

If the total aggregate value of unused supplies exceeds \$5,000 at the termination, discontinuation, or completion of the project and the supplies are not needed for any other Federal award, Supplier may retain the supplies for use on other activities or sell them. In either case, the Supplier must compensate Boeing for the ARPA-E and/or Boeing funded share as specified in 2 C.F.R. § 200.314.

Upon request by ARPA-E or Boeing, the Supplier is required to provide information on the condition, location, value, and use of remaining supplies.

b. Equipment

Post-Award equipment purchases with an acquisition cost per unit in excess of \$25,000 may be purchased only with the prior approval of the Contracting Officer via Boeing.

Boeing and/or supplier may take title to any equipment purchased in whole or in part with Federal funds subject to the following conditions:

- i. The equipment must be used for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project;
- ii. The equipment shall not be encumbered without approval of ARPA-E through Boeing; and
- iii. The equipment shall be used and disposed by for-profit entities in accordance with 2 C.F.R. § 910.360, and by all other entities in accordance with 2 C.F.R. § 200.313.

If the current per unit fair market value of particular equipment is \$5,000 or less at the end of the project period (or the termination of the Award, if applicable), Boeing and/or Supplier may retain, sell, or otherwise dispose of the equipment with no further obligation to Boeing and/or ARPA-E.

If the current per unit fair market value of particular equipment exceeds \$5,000 at the end of the project period (or the termination of the Contract, if applicable), the equipment must be disposed of by for-profit entities in accordance with 2 C.F.R. § 910.360(f) and by all other entities in accordance with 2 C.F.R. § 200.313(e).

Upon request by Boeing and/or ARPA-E, the Supplier is required to provide information on the condition, location, value, and use of remaining equipment.

2 Flowdown .

The Subcontractor agrees to comply with the terms and conditions of this Award. The Subcontractor also agrees to apply the terms and conditions of this Award to all lower tier subcontractors and to require their strict compliance therewith.

5 Site Visits .

Boeing and ARPA-E's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems; inspect property and records relating to this Subcontract; and to provide technical assistance, if required. Supplier must provide, and must require its sub-tier suppliers to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of Boeing and ARPA-E's representatives in the performance of their duties. To the maximum extent practicable, Boeing and ARPA-E will perform site visits and evaluations in a manner that does not unduly interfere with or delay project work.

6 Publications .

ARPA-E encourages the Boeing and subcontractors to publish or otherwise make publicly available the results of work performed under this Award. Subcontractors are required to include the following acknowledgement in publications arising out of or relating to work performed under this Award:
Acknowledgment: "The information, data, or work presented herein was funded in part by the Advanced Research Projects Agency-Energy (ARPA-E), U.S. Department of Energy, under Award Number DE-AR0000692. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

7 Foreign Work, Travel and Purchases .

All work under this Award must be performed in the United States (i.e., Suppliers must expend 100% of the total project cost in the United States), unless Supplier receives advance written authorization from Boeing to perform certain work overseas.

Supplier is required to obtain written authorization from Boeing Procurement Agent before incurring any costs related to foreign travel.

In seeking reimbursement for costs related to foreign travel, Supplier is required to provide a report to the Boeing which explains: (i) where the Supplier will travel, (ii) the purpose of the trip, (iii) what the Supplier will do, and (iv) how the travel relates to this Contract.

PURCHASES

Sense of Congress - It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be made in the United States.

Purchase of Equipment/Supplies - Any new equipment acquired under this Award must be made or manufactured in the United States, to the maximum extent practicable. This requirement does not apply to used or leased equipment. Any supplies acquired under this Award must be made or manufactured in the United States, to the maximum extent practicable.

Purchase of Foreign Equipment/Supplies – Supplier shall notify the Boeing reasonably in advance of purchasing any equipment with an acquisition cost of \$25,000 or more per unit not made or manufactured in the United States. The notification shall include:

- (a) a description of the equipment or supplies to be purchased
- (b) identification of the proposed supplier
- (c) the proposed price
- (d) identification of the country of origin and the reason for acquiring the equipment or supplies outside of the United States.

Boeing will provide consent to purchase or reject within 60 calendar days of receipt of the Supplier's notification.

8 Required Disclosures .

Suppliers and Subrecipient must disclose the following:

A. Any Supplier, Subrecipient or Principal Investigator (including Co-Principal Investigators) is under investigation for or has been convicted of fraud or similar acts, violations of U.S. export control laws and regulations, or violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.);

B. Any Supplier, Subrecipient or Principal Investigator(s) (including Co-Principal Investigators) is debarred, suspended, proposed for debarment, or otherwise declared ineligible from receiving Federal contracts, subcontracts, and financial assistance and benefits; or

Conflicts of Interests Within Project Team: All Suppliers and Subrecipients are required to disclose any actual or apparent personal, organizational, financial, and other conflicts of interest within the Project Team. Examples of potential conflicts of interest may include, but are not limited to: the Principal Investigator for the Prime recipient may have an equity stake in a Subrecipient; the Principal Investigator for a Subrecipient may have a consulting arrangement with the Prime Recipient; or a Subrecipient may be a subsidiary or otherwise affiliated with the Prime Recipient.

Performance of Work in the United States: The Supplier or Subrecipient is required to disclose if any work under the Award is being performed outside of the United States/U.S. Territories. ARPA-E requires 100% of the Total Project Cost to be expended in the United States/U.S. Territories. Certain work may be performed overseas if authorized in advance.(e.g., by approval of a Foreign Work Waiver Request).

9 Lobbying Restrictions .

By accepting funds under this award, the Supplier/Subrecipient agrees that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Clause 4 COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW .

The Subcontractor is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Contract. The Subcontractor is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Contract.

Subawards Intellectual Property Provisions .

(a) Small Business Subawardees: All of the intellectual property provisions found in Attachment 2 (Domestic Small Businesses) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) are hereby incorporated and apply in all subawards with domestic small businesses. In incorporating the above-referenced intellectual property provisions, Boeing expressly requires compliance with the terms and conditions referenced.

(b) University and Nonprofit Organization Subawardees: All of the intellectual property provisions found in Attachment 2 (Domestic Universities and Nonprofit Organizations) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) are hereby incorporated and apply to all subawards with domestic universities or domestic nonprofit organizations. In incorporating the above-referenced intellectual property provisions, Boeing expressly requires compliance with the terms and conditions referenced.

(c) Large Business and Foreign Entity Subawardees:

(1) If a large business or foreign entity receiving a subaward provides cost sharing of at least 20% under its subaward or if the project team, as a whole, (i.e., the Prime Recipient, Subrecipients, and others performing or otherwise supporting work under the award) provides cost sharing of at least 20% under the award, Boeing hereby incorporates all of the intellectual property provisions found in Attachment 2 (Large Businesses)—Waiver (Patent Rights) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) into its subaward with the large business or foreign entity.

(2) If a large business or foreign entity receiving a subaward does not provide cost sharing of at least 20% under its subaward and if the project team, as a whole, (i.e., the Prime Recipient, Subrecipients, and others performing or otherwise supporting work under the award) does not provide cost sharing of at least 20% under the award, Boeing hereby incorporates all of the intellectual property provisions found in Attachment 2 (Large Businesses)—No Waiver (Patent Rights) of the ARPA-E Model Cooperative Agreement (published at <http://arpa-e.energy.gov/>) into its subaward with the large business or foreign entity.

(3) In incorporating the above-referenced intellectual property provisions, Boeing expressly requires compliance with the terms and conditions referenced.

(d) Subaward Unlimited Rights Data List: For any subaward/subcontract with a for-profit entity (including subcontracts with for-profit vendors) for experimental, developmental or research work, Boeing hereby inserts the unlimited rights data list found in paragraph (g)(4) under the Rights in Data clause into the corresponding Rights in Data provision in the subaward/subcontract.