

CUSTOMER CONTRACT REQUIREMENTS
Next Generation Air Transportation System (NextGen) Test Facility
CUSTOMER CONTRACT DTFWA-08-A-00001-BOEING

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

Article 10 Limitation of Funds . Boeing's liability to make payments to Subcontractors is limited to the amount of funds obligated in the Purchase Contract.

Article 11 Approval of Subcontractors . The Contracting Officer (FAA) shall be reasonably notified in advance of entering into any subcontract directly related to this Purchase Contract. Any subcontractors and outside associates or consultants required by the Subcontractor in connection with the services covered by the Purchase Contract shall be limited to individuals or firms that are specifically agreed to by all parties. The contractor must obtain Boeing's written consent before placing any subcontract. Approval regarding placement of subcontracts shall not be unreasonably withheld.

Article 14 Termination .

In addition to any other termination rights provided by this Agreement, Boeing may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued and reasonable termination preparation costs, in each case on or prior to the termination date) by giving the subcontractor at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the subcontractor shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

Should any government or Boeing furnished equipment be provided the property shall be returned within 30 days of termination.

Article 15 Order of Precedence . See Purchase Contract for Order of Precedence.

Article 16 Construction of the Agreement . This Purchase Contract is issued under an Agreement governed as an "other transaction" issued under 49 U.S.C. 106(1).

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other.

Article 17 Disputes .

Any dispute that may arise in connection with this Purchase Contract with respect to rights, duties or obligations of the Parties shall be reduced to writing and submitted for resolution to ascending levels of management of the respective Parties.

Article 18 Warranties .

Neither Boeing nor its supplier make express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

Article 19 Insurance .

Sub awardees and subcontractors shall arrange by insurance or otherwise for protection from and against all liability to third parties arising out of, or related to, its performance of this Agreement. Boeing assumes no liability under this Agreement for any losses arising out of any action or inaction by sub awardees or subcontractors, its employees, or contractors, or any third party acting on its behalf. Sub awardees and subcontractors assume no liability under this Agreement for any losses arising out of any action or inaction by Boeing, its employees, or contractors, or any third party acting on its behalf.

Article 20 Limitation of Liability .

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of funding obligated under this Agreement at the time the dispute arises. In no event shall Boeing nor sub awardee or subcontractor be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

Article 21 Lower Tier Agreements .

As mandated, Boeing has included the appropriate articles from the sub agreement suitably modified in all lower tier Agreements, regardless of tier. Subsequently, all sub-agreements issued hereunder must also include applicable articles, suitably modified.

Article 22 Civil Rights Act .

Sub awardees and subcontractors shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally assisted programs and provide a certification to that effect.

Article 23 Officials Not to Benefit .

AMS Clause 3.2.5-1, "Officials Not to Benefit" and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" are incorporated by reference into this Agreement.

Article 24 Protection of Information .

The parties agree that they shall protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

Article 25 Publicity .

Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA's Director of Research and Technology Development.

Article 4 Milestones . Work shall be accomplished according to the schedule of deliverables as outlined in the Purchase Contract and dictated through Appendix A Task O2 for Boeing.

Article 5 Reporting Requirements . Subcontractors will submit a monthly status report identifying programmatic, technical and schedule progress. This report should briefly describe work accomplished, issues, action items, plans, and other information pertinent to the task; including a synopsis of any achievements on activity outlined in an Appendices, if performed. This report is intended to keep both parties apprised on the status of task performance and issues for management.

Article 6 Intellectual Property . a. Rights in Data. The Government retains Limited Rights in all technical data and Restricted Rights in all software developed under this agreement. "Data" means recorded information, regardless of form or method of recording, which includes technical data and computer software. the term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to -

- (1) Use, modify, reproduce, release, perform, display, or disclose the data within the government without restriction; and,
- (2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreement with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

b. Rights in Inventions. The respective rights of the Government and the other parties to this agreement are the same as those found at T.5-10 "Patent Rights - Retention by the Contractor (Short Form). Please refer to CFR Subpart 27.3 Patent Rights under Government Contracts

c. For task specific intellectual property rights, please refer to the respective appendices of this OTA agreement.

Article 7 Legal Authority . This Agreement is entered into under the authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary and follows the guidance of the FAA Acquisition Management System T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests (Revision 7, October 2007).

Article 8 Points of Contact . Boeing Authorized Agent: Janette Donohue, 206.303.8072, janette.m.donohue@boeing.com

Boeing Program Manager, Paul Comitz, 703.465.3782, paul.comitz@boeing.com

Article 9 Funding and Payment . a. Boeing Subcontractor will contribute goods and services and receive compensation as described in the Purchase Contract. Preapproval is required for travel under this agreement.

b. Invoices with supporting detail should be submitted to Boeing as indicated on the purchase contract. Supporting details must include costs broken out in the following categories: Labor, Materials, IWT/CITAP, Travel. In addition, travel details (dates, traveler's name, purpose) and materials details (description of item, price) shall be provided on or attached to the invoice.

c. In the event of termination or expiration of this Agreement, any funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be de-obligated from the Purchase Contract.

Article 12 Audits . The Government has the right to examine or audit relevant financial records for a period not to exceed three years after expiration of the terms of this Agreement. The contractor/subcontractor must maintain an established accounting system that complies with generally accepted accounting principles. Commercial companies should ensure their record retention policies comply with this policy. Boeing accepts Government audit rights associated with work performed by the EO&T Boeing Research and Technology organization only. Some of the effort will be performed by Boeing Commercial Airplanes (BCA) and its subsidiaries. BCA and its subsidiaries' Cost and Financial Information is competition sensitive, therefore it is not subject to audit.

Article 13 Changes, Modifications . Changes and/or modifications to this Agreement shall be in writing and signed by an authorized representative of Boeing. The modification shall cite the subject Agreement, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.