

CUSTOMER CONTRACT REQUIREMENTS
Integrated Vehicle Energy Technology Development Program for the 6th Generation Energy Optimized Aircraft
CUSTOMER CONTRACT FA8650-11-2-2138

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

PROPERTY - GFP PROVIDED . (a) Property Management. The recipient's property management system shall comply with DoDGARs 34.23.

(b) Title to Property. Recipient may purchase real property or equipment (as defined in DoDGARs 34.2) in whole or in part with Federal funds under this agreement only with the prior approval of the grants officer (except that additional approval is not required for such items included in the proposed/negotiated budget at the time of award). Title to such real property or equipment shall vest in the recipient upon acquisition subject to the conditions that the recipient:

(1) Use the property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the grants officer.

(3) Use and dispose of the property in accordance with DoDGARs 34.21, subparagraphs (d) and (e).

(c) Government Furnished Property. The following Government owned property will be provided to the recipient for use on this program subject to the requirements in DoDGARs 34.22.

GFP listed in paragraph 1.7.1 of 1 Sep 2010 Boeing cost proposal as updated 1 Dec 2010 is hereby incorporated by reference.

(d) All property is to be furnished "as is." Title to Government-owned property (equipment and supplies) shall remain vested in the Government and such property shall be managed in accordance with DoDGARs 34.22.

COST PRINCIPLES . The cost principles in 48 CFR 31 and 48 CFR 231 effective on the date of this agreement apply.

STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS . The recipient shall establish or use existing financial systems that comply with Generally Accepted Accounting Principles (GAAP) and DoDGARs 34.11.

Flowdown of DoDGARs Requirements .**1. FLOWDOWN OF DODGARS REQUIREMENTS**

- (a) If the subawardee is a university or other nonprofit organization, DoDGARs part 32 shall apply to this subaward/contract/agreement/Purchase Contract. If the subawardee is a state or local government, DoDGARs part 33 shall apply to this subaward/contract/agreement/Purchase Contract. If the subawardee is for profit entity, DoDGARs part 34 shall be applied to for-profit entities.

Appendix A to DoDGARs part 34 shall apply in each of the above cases.

- (b) The recipient shall apply to each subaward the requirements of the DoDGARs applicable to the particular type of

subrecipient. DoDGARs part 32 shall be applied to awards to universities or other nonprofit organizations, DoDGARs part 33 shall be applied to awards to state and local governments, and DoDGARs part 34 shall be applied to for-profit entities.

- (c) Recipients awarding contracts under this agreement shall assure that contracts awarded contain the provisions in Appendix A to DoDGARs part 34.

DATA RIGHTS .

(a) Definitions:

Government Purpose Rights are defined as in DFARS 252.227-7013. For the purposes of this agreement, Government Purpose Rights are effective in perpetuity.

Limited Rights are defined as in DFARS 252.227-7013.

"Restricted rights" apply only to noncommercial computer software and mean the Government's rights to-

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time

shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the

Contractor if the transferor destroys all copies

of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain

subject to restrictions set forth in DFARS 252.227-7014;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive),

backup, or modification purposes;

(iv) Modify computer software provided that the Government may-

(A) Use the modified software only as provided in paragraphs (i) and (iii) of this definition; and

(B) Not release or disclose the modified software except as provided in paragraphs (ii), (v) and (vi) of this definition;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal

Acquisition Regulation) in support of this or a

related contract to use computer software to diagnose and correct deficiencies in a computer program, to

modify computer software to enable a

computer program to be combined with, adapted to, or merged with other computer programs or when

necessary to respond to urgent tactical situations, provided that-

(A) The Government obtains prior written approval from the party which has granted restricted rights permitting release or disclosure to particular contractors or subcontractors;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(iv) of this definition, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (i) of this definition; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that-

(A) The Government obtains prior written approval from the party which has granted restricted rights permitting release or disclosure to particular contractors or subcontractors;

(B) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the

software, or use software decompiled, disassembled,

or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.

(b) All rights and title to data, as defined in 48 CFR 27.401, generated under this agreement shall vest in the recipient.

(c) The Data Rights Assertions are set forth in Attachment 2 to this Agreement. The recipient hereby grants to the U.S. Government a royalty free, world-wide, nonexclusive, irrevocable license to use, modify, reproduce, release, perform, display or disclose any data first generated in performance of this agreement for Government purposes, with the exception of data related to items numbered 5 through 8 and 20 through 24 in Attachment 2 which will be further developed under this agreement and furnished with Limited Rights or Restricted Rights as applicable.

(d) Government-supplied, generic engine and air vehicle models will be enhanced and furnished unlocked with Government Purpose Rights in accordance with the Statement of Work.

(e) Performance data generated by all models will be delivered with unlimited rights.

(f) The recipient is responsible for affixing appropriate markings indicating rights on all data delivered under the agreement. The Government will have unlimited rights in all data delivered without markings.

(g) The recipient shall include this article, suitably modified to identify the parties, in all lower tier contracts and awards, regardless of tier, for experimental, developmental, or research work.

(h) The Recipient reserves the right to propose additional Data Rights Assertions as necessary throughout the performance of this Agreement. Any revision to the Data Rights Assertions will be subject to mutual agreement of the parties.

FOREIGN ACCESS TO TECHNOLOGY .

(a) Definitions:

"Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-how" means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

(b) General. The parties agree that research findings and technology developments in 6th Generation Energy Optimized Aircraft technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this agreement by foreign firms or institutions must be carefully controlled. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et. seq.).

(c) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

(1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraph

(c)(2)below shall apply to transfer of ITAR restricted technology only. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

(i) sales of products or components, or

(ii) licenses of software or documentation related to sales of products or components, or

(iii) transfer to foreign subsidiaries of the recipient for purposes related to this

agreement, or

(iv) transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.

(2) The recipient shall provide timely notice to the Government of any proposed transfer from the recipient of ITAR restricted technology developed under this agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the recipient, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the recipient.

INVENTIONS .

(a) The clause entitled "Patent Rights (Small Business Firms and Nonprofit Organizations (37 CFR 401.14)" is hereby incorporated by reference and the clauses in paragraph 401.14 are modified as follows: replace the word "contractor" with "recipient"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "government"; replace the word "contract" with "agreement"; delete paragraphs (g)(2), (g)(3) and the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1). Paragraph (L), Communication, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office.

(b) The recipient shall file Invention (Patent) Reports as of the close of each performance year and at the end of the term for this Agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 90 days after the expiration of the final performance period. The recipient shall use DD Form 882, Report of Inventions and Subcontracts, to file an inventions report. Negative reports are also required. The recipient shall submit the original and one copy to the servicing Staff Judge Advocate's office, one copy to the grants administration office, and one copy to the grants officer, if different than the grants administration office.

ASSURANCES .

(a) By signing or accepting funds under the agreement, the recipient assures that it will comply with applicable provisions of the following National policies on:

(1) Prohibiting discrimination:

(i) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act

of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195;

(ii) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101,

et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90;

(iii) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973

(29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD

regulations at 32 CFR part 56;

(2) The Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et

seq.), as implemented by Executive Order 11738 (3 CFR, 1971-1975 Comp., p. 799).

(b) The recipient shall obtain assurances of compliance from contractors and recipients at lower tiers.

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION .

Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to

<http://www.fsr.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly

compensated executives for the preceding completed fiscal year, ifi.

the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received-

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year,

if-

in the subrecipient's preceding fiscal year, the subrecipient received

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards,

and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

DATA RIGHTS ASSERTIONS .

All data items shall be prepared in accordance with the Data Item Descriptions (DID) and submitted as specified in the schedule shown in the data items table below. The DIDs are

primarily for guidance and may be tailored for format and content as appropriate.

Please refer to attachment 2 of the Prime Contract for Data Item Descriptions Table.

AUDIT .

- (a) If the recipient expends \$500,000 or more in one year under Federal awards they shall have an audit performed for that year by an independent auditor, in accordance with DoDGARs 34.16. The audit should be made a part of the regularly scheduled, annual audit of the recipient's financial statements. However, the recipient may have Federal awards separately audited, if it elects to do so unless prohibited by Federal laws or regulations.
- (b) The recipient shall provide a copy of the auditor's report to the grants officer upon request.

TRAFFICKING IN PERSONS (2010). (a) Provisions applicable to a recipient that is a private entity.

(1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not--
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(i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(ii) Procure a commercial sex act during the period of time that the award is in effect; or

(iii) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity --

(i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

(ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either--

(A) Associated with performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ``OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),'' as implemented by our agency at AFRL/RZ

(b) Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--

(i) Associated with performance under this award; or

(ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ``OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),'' as implemented by our agency at AFRL/RZ

(c) Provisions applicable to any recipient.

(1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

(2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

(i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

(ii) Is in addition to all other remedies for noncompliance that are available to us under this award.

(3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(d) Definitions. For purposes of this award term:

(1) "Employee" means either:

(i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

(ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

(2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) "Private entity":

(i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

(ii) Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(B) A for-profit organization.

(4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).