

CUSTOMER CONTRACT REQUIREMENTS
GMD Development and Sustainment
CUSTOMER CONTRACT HQ0147-12-C-0004

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.

52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

52.203-7 Anti-Kickback Procedures (OCT 2010). Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract. This clause applies only if this contract exceeds \$150,000.

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997). This clause applies to this contract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010). This clause applies only if this contract exceeds \$150,000. Paragraph (g)(2) is modified to read as follows: "(g)(2) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

52.203-13 Contractor Code of Business Ethics and Conduct (APR 2010). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

52.203-14 Display of Hotline Poster(s) (DEC 2007). This clause applies only if this contract is in excess of \$5,000,000 and is not for a commercial item or performed entirely outside the United States. For the purposes of this clause, the United States is defined as the 50 states, the District of Columbia, and outlying areas.

52.204-2 Security Requirements (AUG 1996). Changes clause means the changes clause of this contract. This clause applies only if access to classified material is required.

52.204-9 Personal Identity Verification of Contractor Personnel. (JAN 2011). This clause applies only if performance under this contract requires Seller to have routine physical access to a Federally-controlled facility and/or

routine access to a Federally-controlled information system.

52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment (DEC 2010). This clause applies to contracts that exceed \$30,000 and is not a contract or subcontract for commercially available off-the-shelf items. "Contracting Officer" means "Buyer." Seller shall disclose to Buyer, in writing, whether as of the time of Buyer's offered contract herein, Seller or its principals, is or is not debarred, suspended or proposed for debarment by the Federal Government.

52.211-5 Material Requirements (AUG 2000). Any notice will be given to Buyer rather than the Contracting Officer.

52.211-15 Defense Priority and Allocation Requirements (APR 2008). This clause is applicable if a priority rating is noted in this contract.

52.215-2 Audit and Records - Negotiation (OCT 2010). This clause applies only if this contract exceeds \$150,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types; (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.215-11 Price Reduction for Defective Certified Cost or Pricing Data -- Modifications (AUG 2011). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. "Contracting Officer" shall mean "Contracting Officer or Buyer." In subparagraph (d)(2)(i)(A), delete "to the Contracting Officer." In subparagraph (d)(2)(ii)(B), "Government" means "Government" or "Buyer." In Paragraph (e), "United States" shall mean "United States or Buyer."

52.215-13 Subcontractor Certified Cost or Pricing Data -- Modifications (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. The certificate required by paragraph (c) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

52.215-14 Integrity of Unit Prices Alternate I (OCT 1997).

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(k).

52.215-21 Requirement for Certified Cost or Pricing Data or Information Other Than Certified Cost and Pricing Data - Modifications (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

52.215-21 Requirement for Cost or Pricing Data or Information Other Than Cost and Pricing Data - Modifications Alternate II (OCT 1997).

52.216-7 Allowable Cost and Payment (JUN 2011).

52.216-8 Fixed Fee (JUN 2011).

52.219-9 Small-Business Subcontracting Plan (JAN 2011). This clause applies only if this contract exceeds \$650,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small and Small Disadvantaged Business and Women-Owned Small Business Subcontracting Plan Certificate of Compliance. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the ISR and/or SSR using eSRS, and, in accordance with paragraph (d)(10)(vi), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of Seller's official responsible for acknowledging or rejecting the ISRs, to its subcontractors with subcontracting plans.

As required by subparagraph (d)(10)(v), the following information is provided: (1) the prime contract number is HQ0147-12-C-0004;

(2) Buyer's DUNS number is 126368257, and (3) the email address of the Government or Buyer official responsible for acknowledging or rejecting reports is Bradley.p.bruce @boeing.com.

52.219-9 Small Business Subcontracting Plan (DEVIATION) Alternate II (FEB 2009). This clause applies only if this contract exceeds \$550,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small and Small Disadvantaged Business and Women-Owned Small Business Subcontracting Plan Certificate of Compliance. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the SF 294 and/or SSR using eSRS, in accordance with paragraph (l) of this clause. When responding to a solicitation, Seller/Bidder shall comply with the requirements of this clause.

52.219-9 Small Business Subcontracting Plan (Deviation) (FEB 2009) Alternate II (OCT 2001).

This clause applies only if this contract exceeds \$550,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small and Small Disadvantaged Business and Women-Owned Small Business Subcontracting Plan Certificate of Compliance. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the SF 294 and/or SSR using eSRS, in accordance with paragraph (l) of this clause.

52.222-2 Payment for Overtime Premiums (JUL 1990).

52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 1995). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller the amount of any sums the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

52.222-20 Walsh-Healey Public Contracts Act (OCT 2010). This clause applies only if this contract exceeds \$15,000.

52.222-21 Prohibition of Segregated Facilities (FEB 1999).

52.222-26 Equal Opportunity (MAR 2007).

52.222-35 Equal Opportunity for Veterans. (SEP 2010). This clause applies only if this contract is \$100,000 or more.

52.222-36 Affirmative Action For Workers With Disabilities (OCT 2010). This clause applies only if this contract exceeds \$15,000.

52.222-37 Employment Reports on Veterans (SEP 2010). This clause applies if this contract is \$100,000 or more.

52.222-50 Combating Trafficking in Persons (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

52.222-54 Employment Eligibility Verification (JAN 2009).

This clause applies to all subcontracts that (1) are 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 \$3,000; and (3) includes work performed in the United States.

52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

52.223-11 Ozone Depleting Substances (MAY 2001).

52.223-15 Energy Efficiency In Energy-Consuming Products (DEC 2007).

52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving (AUG 2011).

52.225-13 Restriction on Certain Foreign Purchases (JUN 2008).

52.227-1 Authorization and Consent (DEC 2007).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007). A copy of each notice sent to the Government will be sent to Buyer.

52.227-10 Filing of Patent Applications - Classified Subject Matter (DEC 2007).

52.227-11 Patent Rights -- Ownership by the Contractor (DEC 2007). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.227-14 Rights in Data--General (DEC 2007). This clause applies only if data, as defined in paragraph (a) of the clause, will be produced, furnished, or acquired under this contract.

52.227-21 Technical Data Declaration, Revision, and Withholding of Payments-Major Systems (DEC 2007). The term "Contracting Officer" shall mean "Buyer." In paragraph (b) (2), the term "Government" shall mean "Buyer."

52.227-22 Major System-Minimum Rights (JUN 1987).

52.228-3 Workers' Compensation Insurance (Defense Base Act) (APR 1984).

52.228-5 Insurance - Work on a Government Installation (JAN 1997). Seller shall provide and maintain insurance as set forth in this contract.

52.230-6 Administration of Cost Accounting Standards (JUN 2010). Add "Buyer and the" before "CFAO" in paragraph (m). This provision applies if clause H001, H002, H004 or H007 is included in this contract.

52.234-1 Industrial Resources Developed Under Defense Production Act Title III (DEC 1994).

52.234-4 Earned Value Management System (JUL 2006). This clause applies to those subcontractors specified elsewhere in this contract. In (b) (2) "Contracting Officer" means Buyer. In (c) Government means Buyer and "may" is substituted for "will." In (d) "Contracting Officer" means Buyer. In (e) delete the last two sentences. Seller agrees to notify Buyer in writing when a waiver or change is approved by the CFA. In (f) "Contracting Officer" means Contracting Officer or Buyer and Government means Government or Buyer.

52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

52.242-15 Stop-Work Order Basic (AUG 1989), Alternate I (APR 1984) . Change "90 days" and "30 days" to "100 days" and "20 days" respectively. The terms "Contracting Officer" and "Government" shall mean Buyer.

52.244-6 Subcontracts for Commercial Items (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

52.245-1 Government Property (AUG 2010). This clause applies only if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer. If the contract incorporates Boeing General Provision GP4, the Government-Owned Property article in GP4 is hereby deleted.

52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003). This clause only applies if this contract involves international air transportation.

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.

252.203-7000 Requirements Relating to Compensation of Former DoD Officials. (JAN 2009).

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (DEC 2008).

This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold and is not for the purchase of commercial items or commercial components. Except in paragraph (a), "this contract" and "the contract" mean the contract between Buyer and Seller. In subparagraph (d)(2), delete the words "or first-tier subcontractor." In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer, not the Government. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer." Paragraph (g) is deleted.

252.204-7000 Disclosure of Information (DEC 1991). Seller will submit requests for authorization to release through Buyer. Seller shall submit written requests to Buyer a minimum of 60 days prior to proposed date of release.

252.204-7008 Requirements for Contracts Involving Export-Controlled Items. (APR 2010).

252.211-7000 Acquisition Streamlining (OCT 2010). This clause applies only if this contract exceeds \$1.5 million.

252.211-7003 Item Identification and Valuation (JUN 2011). This clause applies if Buyer has made known to Seller that it is acquiring by this contract any item for which unique item identification is required in accordance with paragraph (c) (1) of this clause.

252.216-7999 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel (APR 2010).

252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (SEP 2011). Except paragraph (g) which is hereby deleted.

252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (OCT 2010). Except paragraph (g) which is hereby deleted.

252.222-7000 Restrictions on Employment of Personnel (MAR 2000).

252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements (DEC 2010).

This clause applies to all solicitations and contracts (including task or delivery orders and bilateral modifications adding new work) valued in excess of \$1 million, except for contracts for the acquisition of commercial items, including commercially available off-the-shelf-items. Seller agrees to flow down this clause to all covered subcontractors. Seller agrees by accepting this contract that it shall not enter into, and shall not take any action to enforce, any provision of any existing agreements, as describe in paragraph (b)(1) of this clause, with respect to any of Seller's employees or independent contractors performing work for Seller related to this contract.

252.223-7001 Hazard Warning Labels (DEC 1991). This clause applies only if Seller delivers hazardous material under this contract.

252.223-7002 Safety Precautions for Ammunition and Explosives (MAY 1994). This clause applies only if this contract involves ammunition or explosives. "Government" means Government or Buyer in paragraph (b)(2), each time it appears in (e), (f)(1), (f)(2), the first time it appears in (g)(1)(i), and in (g)(3). "Government" means Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).

252.223-7003 Change in Place of Performance-Ammunition and Explosives (DEC 1991). This clause applies only if DFARS 252.223-7002 is applicable to this contract. The term "Contracting Officer" means Buyer.

252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993).

252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (SEP 1999). This clause applies only if (1) this contract, or a subcontract at any tier, is for the development, production, manufacture, or purchase of arms, ammunition, and explosives (AA&E) or (2) AA&E will be provided to Seller, or to a subcontractor at any tier, as Government-furnished property. "Arms, ammunition, and explosives (AA&E)" means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

252.225-7001 Buy American Act and Balance of Payments Program (JAN 2009).

252.225-7007 Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies (SEP 2006).

252.225-7008 Restriction on Acquisition of Specialty Metals (JUL 2009). This clause applies if the contract exceeds \$150,000.

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (JAN 2011).

252.225-7013 Duty Free Entry (DEC 2009). This clause applies if Seller is located in a qualifying country (as defined in DFARS Part 225.8) or if Seller is located in any other country and the estimated U.S. duty for the deliverable items will exceed \$200 per unit. Seller shall include the prime contract number on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause. The information required by paragraph (j)(3) of this clause is available upon request."

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (JUN 2011).

252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States (JUL 2011). This clause, including this paragraph (q), applies only if, in performance of this contract, employees of Seller are authorized to accompany U.S. Armed Forces deployed outside the United States in (1) contingency operations; (2) humanitarian or peacekeeping operations; or (3) other military operations or military exercises, when designated by the Combatant Commander.

252.225-7043 Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States (MAR 2006). This clause applies only if this contract requires Seller to perform or travel outside the United States and Seller is not (i) a foreign government, (ii) a representative of a foreign government, or (iii) a foreign corporation wholly owned by a foreign government..

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises--DoD Contracts and Native Hawaiian Small Business Concerns (SEP 2004). This clause applies only if this contract exceeds \$500,000.

252.227-7013 Rights In Technical Data -- Noncommercial Items (SEP 2011).

252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation (MAR 2011). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7015 Technical Data -- Commercial Items (JUN 2013). This clause applies whenever any technical data related to commercial items is developed in any part at private expense and will be obtained from Seller or its subcontractors for delivery to the Government.

252.227-7016 Rights in Bid or Proposal Information (JAN 2011).

252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995). This clause applies only if computer software may be originated, developed, or delivered under this contract.

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (MAR 2011). In paragraph (c)(1), the term "Government" shall mean "Government and Buyer".

252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of this contract.

252.227-7030 Technical Data -- Withholding of Payment (MAR 2000). In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999). This clause applies only if the delivery of data is required by this contract.

252.227-7038 PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (DEC 2007). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business firm or nonprofit organization.

252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (DEC 1991).

252.231-7000 Supplemental Cost Principles (DEC 1991).

252.234-7001 Notice of Earned Value Management System (APR 2008). This clause applies only if 252.234-7002 is applicable.

252.234-7002 Earned Value Management System (MAY 2011).

With the exception of paragraphs (i) and (j), Seller shall comply with EVMS requirements if Seller is identified to comply elsewhere in this contract.

252.234-7004 Cost and Software Data Reporting System. (NOV 2010). "Government means Buyer." To the extent that a Cost and Software Data Reporting System (CSDR) item is required as set forth elsewhere in this contract, CSDR reporting for that item is required by Seller and subcontractors at any tier for subcontracts that exceed \$50 million.

252.235-7003 Frequency Authorization (DEC 1991). This clause applies only if this contract requires the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

252.237-7023 Continuation of Essential Contractor Services. (OCT 2010). This clause applies if services provided by Seller have been determined to be "essential contractor services in support of mission-essential functions," and are listed in the attachment referenced in paragraph (b) of the clause. In paragraph (c)(2), "Contracting Officer" shall mean Buyer. In paragraph (c)(3) "Contracting Officer" shall mean the "Contracting Officer or Buyer." In paragraph (c), "Contracting Officer" shall mean Buyer. In paragraph (g), "Contracting Officer" shall mean Buyer and ninety days is replaced with sixty days.

252.243-7001 Pricing of Contract Modifications (DEC 1991).

252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (SEP 2011). The terms of the clauses included herein apply to the commercial items and commercial component items ordered by Buyer from Seller under this contract.

252.245-7001 TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (FEB 2011). Contractor shall include this clause in all subcontracts under which Seller acquires any serially-managed items.

252.246-7003 Notification of Potential Safety Issues (JAN 2007).

This clause applies only if this subcontract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies and parts integral to a system. The notification required by paragraph (c) of this clause will be provided to Buyer and to the administrative contracting officer (ACO) and the procuring contracting officer (PCO) if Seller is aware of the ACO and PCO for the prime contract.

252.247-7023 Transportation of Supplies by Sea (MAY 2002). This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." In paragraph (g) "Government" means Buyer. This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. Paragraphs (f) and (g) are excluded.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA Alternate III (MAY 2002). This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days."

This clause applies if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold and (iii) is cost-reimbursement, incentive, time-and-materials, labor-hour or price redeterminable type or any combination of these for which cost or pricing data are required or for which Buyer is required to furnish reports to the Government in accordance with paragraph (e) of this clause.

252.249-7002 Notification Of Anticipated Contract Termination Or Reduction (OCT 2010). This clause applies only if this contract is \$650,000 or more. Seller will comply with the notice and flowdown requirements of paragraph (d)(2) of the referenced clause.

252.251-7000 Ordering From Government Supply Sources (NOV 2004). This clause applies only if Seller is notified by Buyer that Seller is authorized to purchase from Government supply sources in the performance of this contract.

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

H-09 ORGANIZATIONAL CONFLICT OF INTEREST (Mar 2010)

a. Purpose: The primary purpose of this clause is to aid in ensuring that:

- (1) the Seller's objectivity and judgment are not biased because of its present or planned interests which relate to work under this contract;
- (2) the Seller does not obtain unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources; and
- (3) the Seller does not obtain unfair competitive advantage by virtue of its access to proprietary information belonging to others.

b. Scope: Organizational Conflict of Interest (OCI) rules, procedures and responsibilities as described in FAR Subpart 9.5 shall be applicable to this contract and any resulting subcontracts.

- (1) The general rules in FAR 9.505-1 through 9.505-4 and the restrictions described herein shall apply to performance or participation by the Seller and any of its affiliates or their successors-in-interest (hereinafter collectively referred to as "Seller") in the activities covered by this contract as subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity.
- (2) The Missile Defense Agency's OCI policy is in Section J, Attachment 19 titled MDA Organizational Conflicts of Interest Policy Memorandum No. 51, dated Jul 27, 2009 of this contract.

c. Access to and Use of Government Information: If the Seller, in performance of this contract, obtains access to Government information, or other program related information, such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, the Seller agrees that without prior written approval of Buyer, it shall not:

- (1) use such information for any private purpose;
- (2) compete for work based on such information until one year after such information is released or otherwise made available to the public;
- (3) submit an unsolicited proposal to the Government based on such information;
- (4) release such information.

d. Access to and Protection of Proprietary Information: The Seller agrees to treat proprietary data in accordance with the provisions of FAR 9.505-4. Seller shall enter into a written agreement for the protection of the proprietary data of others and exercise diligent effort to protect such proprietary data from unauthorized use or disclosure.

e. Subcontracts: The Seller shall include this clause in consulting agreements, teaming agreements, subcontracts, or other arrangements for provision of services or supplies of any tier. The terms "contract", "Contractor", and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

f. Representations and Disclosures:

- (1) The Seller represents that it has disclosed to Buyer, prior to award, all facts relevant to the existence or potential existence of organizational conflicts of interest as that term is used in FAR Subpart 9.5. To facilitate disclosure and Buyer approval, the Seller shall complete an OCI Analysis/Disclosure Form for each MDA, Ballistic Missile Defense (BMD), and BMD-related contract or subcontract (form shall be requested from Buyer).
- (2) The Seller represents that if it discovers an organizational conflict of interest or potential conflict of interest after award, a prompt and full disclosure shall be made in writing to Buyer. This disclosure shall include a description of the action the Contractor has taken or proposes to take in order to avoid or mitigate such conflicts.

g. Remedies and Waiver:

- (1) For breach of any of the above restrictions or for non-disclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, Buyer may terminate this contract for default, disqualify the Seller from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract. If, however, in compliance with this clause, the Seller discovers and promptly reports an organizational conflict of interest (or the potential thereof) subsequent to contract award, Buyer may terminate this contract for convenience if such termination is deemed to be in the best interest of Buyer or take other appropriate actions.
- (2) The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, Seller may at any time seek a waiver from Buyer by submitting a full written description of the requested waiver and the reasons in support thereof.

h. Government Indemnity: The Seller shall hold Buyer and the Government harmless and indemnify Buyer and the Government as to any cost or loss resulting from the unauthorized use or disclosure of third party information data or software by Seller, its employees, subcontractors or agents.

H-10 ENABLING CLAUSE FOR BMD INTERFACE SUPPORT (APR 2009)

a. It is anticipated that, during the performance of this contract, the Seller will be required to support Technical Interface/Integration Meetings (TIMS) with Contractors and other Government agencies. Appropriate organizational conflicts of interest clauses, if any, will be negotiated as needed to protect the rights of the Contractor and the Government.

b. Interface support deals with activities associated with integration of the requirements of this contract into BMD system plans and support of key Missile Defense Agency (MDA) program reviews.

c. The Seller agrees to cooperate with BMD Contractors by providing access to BMDS technical matters; provided, however, the Seller will not be required to provide Freedom of Information Act protected information to non-Government entities or personnel in the absence of a non-disclosure agreement between the Seller and such entities.

d. Seller further agrees to include a clause in each subcontract requiring compliance with paragraph c. above, subject to coordination with Seller. This agreement does not relieve the Seller of its responsibility to manage its subcontracts effectively.

- e. Personnel from Sellers or other Government agencies are not authorized to direct the Seller in any manner.
- f. This clause shall not prejudice the Seller or its subcontractors from negotiating separate organizational conflict of interest agreements with BMD Contractors; however, these agreements shall not restrict any of the Government's rights established pursuant to this clause or any other contract.

H-28 DISTRIBUTION CONTROL OF TECHNICAL INFORMATION (Oct 2009)

a. The following terms applicable to this clause are defined as follows:

1. **Technical Document.** Any recorded information (including software) that conveys scientific and technical information or technical data.
 2. **Scientific and Technical Information.** Communicable knowledge or information resulting from or pertaining to the conduct or management of effort under this contract. (Includes programmatic information).
 3. **Technical Data.** Recorded information related to experimental, developmental, or engineering works that can be used to define an engineering or manufacturing process or to design, procure, produce, support, maintain, operate, repair, or overhaul material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information and computer software documentation.
- b. Except as otherwise set forth in the Contract Data Requirements List (CDRL), DD Form 1423, or paragraph e. below, the distribution of any technical documents prepared under this contract, in any stage of development or completion, is prohibited outside of the contractor and applicable subcontractors under this contract unless expressly authorized/directed by the Contracting Officer in writing.

c. Except as otherwise set forth in the CDRL or otherwise directed by the government (e.g., paragraph d. below) all technical documents prepared under this contract shall be marked with the following distribution statement, warning, and destruction notice:

1. **DISTRIBUTION STATEMENT F:** Further dissemination only as directed by DoD, Missile Defense Agency, ATTN: Procuring Contracting Officer, MDA/CTN, 1725 Jefferson Davis Highway Suite 809, Arlington, VA 22202 or higher authority. Date determination (01 January 2001).

2. **WARNING -** This document/software contains technical data/software whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751 et seq.) or the Export Administration Act of 1979, as amended, (Title 50, U.S.C., App 2401 et seq). Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DOD Directive 5230.25.

3. **DESTRUCTION NOTICE -** For classified documents, follow the procedures in DOD 5220.22M, National Industrial Security Program Operating Manual, Chapter 5, Section 7, or DOD 5200.1R, Information Security Program Regulation, Chapter 6, Section 7. For unclassified, limited documents, destroy by any method that will prevent disclosure of contents or reconstruction of the document.

d. As a part of the review of preliminary or working draft technical documents, the Government will determine if a distribution statement less restrictive than the statement above would provide adequate protection. If so, the Government's concurrence/comments will provide specific instructions on the distribution statement to be marked on the final technical documents before primary distribution.

e. Seller and subcontractors are authorized to use technical documents generated or held under this contract for purposes of this contract or any other MDA contract, solicitation or program and to flow such technical documents to each other, DOD officials and other DOD contractors having a "need to know" in connection with this contract or any other MDA contract, solicitation or program. When there is any doubt as to "need to know" for purposes of this paragraph, the Contracting Officer's Representative (COR) will provide direction. The authorization provided by this paragraph e. is subject to strict compliance with contract security requirements, export control requirements, contractor proprietary restrictions/markings and/or the provisions of any applicable non-disclosure agreements which may be in effect.

H-12 CONTROL OF ACCESS TO MDA SPACES AND INFORMATION SYSTEMS (MAY 2005)

a. To maintain the security of the MDA spaces and information systems, the Seller shall notify Buyer in writing whenever a Seller or subcontractor employee included on the current Visit Authorization Request/Letter no longer supports this contract. This requirement shall apply to both Seller and employee initiated termination of services and to temporary suspension of services.

b. The Seller will cooperate with Buyer in taking the following actions (facilitating the employee's return of all badges, keycards, and passes). Specifically, upon notification, Buyer will work with the Technical Area Security Officer (TASO)/Office Security Manager (OSM) to ensure timely action to:

- (1) remove the employee from the current Visit Authorization Request/Letter;
- (2) cancel any MDA badge, keycard or Pentagon Pass issued pursuant to the Visit Authorization Request/Letter; and
- (3) terminate the MDA LAN account/access privileges.

c. The Seller shall identify the reason for and date of termination or expected period of suspension and submit the notification to Buyer within five (5) working days prior to service discontinuation. For unplanned termination or suspension of services, notification shall be made on the same working day as the termination/suspension action.

H-20 SENSITIVE INFORMATION TECHNOLOGY WORK (APR 2009)

a. DoD 5200.2-R, DoD Personnel Security Program, requires Seller personnel, who perform work on sensitive Information Technology (IT)/Automated Data Processing (ADP) systems (hereafter referred to as IT), to be assigned to positions which are designated at one of three sensitivity levels (IT-I, IT-II or IT-III). These designations equate to Critical Sensitive, Non-Critical Sensitive, and Non-Sensitive. Working on-site in any Buyer Facility requires a minimum Sensitivity of IT-II. The following investigations are required: IT-I designated positions require a Single Scope Background Investigation (SSBI). IT-II designated positions require a National Agency Check with Law and Credit (NACLC).

IT-III positions associated with Buyer are found only at Seller's facilities. See below for requirement.

b. The required investigation will be completed prior to the assignment of individuals to sensitive duties associated with the position.

c. For IT-III positions at the Contractor's facility, the Seller will forward their employee information (completed SF 85P, Questionnaire for Positions of Public Trust), and two (2) DD Forms 258 (Fingerprint cards) either electronically or on magnetic media to: Missile Defense Agency, Security and Program Protection (MDA/DOSS); ATTN: Personnel Security, 7100 Defense Pentagon, Washington, DC 20301-7100.

d. Buyer retains the right to request removal of Seller personnel, regardless of prior clearance or adjudication status, whose actions, while assigned to this contract, clearly conflict with the interests of the Government. The reason for removal will be fully documented in writing by Buyer. When and if such removal occurs, the Seller will within 30 working days assign qualified personnel to any vacancy(ies) thus created.

H-23 CONTRACTOR EMPLOYEE OUT-PROCESSING (MAY 2005)

Prior to the departure of on-site Seller employees, the departing employee shall complete an out-processing checklist as required by MDA Directive Number 5000.01, and return the completed checklist, with required signatures, to Buyer. Buyer will provide the completed form to the PCO to be retained in the official contract file by the PCO.

H-29 COMMERCIAL COMPUTER SOFTWARE LICENSE (JUN 2010)

a. Unless otherwise approved by the PCO, commercial computer software licenses shall designate the U.S. Government as a contingent licensee, able to replace the Seller as the primary licensee upon notifying the licensor. A copy of the negotiated license shall be furnished to the PCO. Per DFARS 227.7202, the terms of the licenses cannot be inconsistent with Federal procurement law and must satisfy user needs. This includes the Seller's / subcontractor's needs for the software to perform this contract and the Government's needs for the software to accomplish the Government's ultimate objectives. At a minimum, this shall include the rights to make an archive copy of the software, to relocate the computer on which the software resides, to re-host the software on a different computer, to permit access by support contractors, and to permit the Government to transfer the license to another seller.

b. Nothing in this clause shall take precedence over any other clause or provision of this contract.

Government concurrence, as defined in paragraph a above, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

H-34 AS IS GOVERNMENT FURNISHED DATA/DOCUMENTATION (Nov 2010)

All technical data (as defined in DFARS 252.227-7013 and DFARS 252.227-7014) furnished by the Government is in an "as is" condition without any warranty as to its accuracy, completeness, or adequacy. The Seller shall use this technical data at its own risk. The Government assumes no responsibility for such furnished data/documentation nor will the Government have any liability for equitable adjustments to the terms and conditions of this contract should such data/documentation prove to be inaccurate, incomplete, or otherwise defective.

H-35 INCORPORATING COMMERCIAL AND OPEN SOURCE SOFTWARE (Nov 2010)

a. DFARS 252.227-7014(d) requires the written approval of the PCO before the Seller may incorporate any copyrighted computer software in the software to be delivered under this contract.

b. A request for approval to incorporate Commercial Computer Software should be accompanied by a license that conforms with the requirements of the Commercial Computer Software Licenses clause of this contract.

c. A request for approval to incorporate Open Source Software must be accompanied by the applicable license, a detailed description of the source of the software and how it has been or will be used, and a legal analysis of the restrictions imposed and potential risks and liabilities.

d. Nothing in this clause shall take precedence over any other clause or provision of this contract.

Government concurrence, as defined in paragraph a above, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

H-DSC-05 FEE

Seller shall implement the following elements of cost and fee for use in the preparation of proposals and to support negotiations.

a. No Fee on Other Direct Cost (ODCs). ODCs are costs (other than labor and materials) directly associated with the final cost objective. With the exception of nominal material handling, the Contractor is not entitled to fee on any ODCs. Examples of ODC include, but are not limited to: travel, consumables, renewable licenses, leases, consultants, special tooling, and royalties. This limitation shall flow down to all tiers of subcontractors. Not applicable to fixed price subcontract arrangements.

b. No Fee on Fee. Seller is not entitled to fee on subcontractor fee and/or profit (e.g. "fee on fee"). In calculating total fee, Seller shall exclude all proposed subcontractor fee/profit from its total cost pool. This limitation shall flow down to all tiers of subcontractors. Not applicable to fixed price arrangements.

H-DSC-06 GOVERNMENT PROPERTY CONTRACTOR ACQUIRED PROPERTY-

Seller shall identify any required Property to Buyer prior to procurement. Seller shall maintain accurate records of Contractor Acquired Property (CAP)/Government Furnished Property (GFP) including material per FAR Part 45, and FAR 52.245-1, to include subcontractor GFP and CAP. The Seller shall annually perform a physical inventory of GFP and CAP and provide results (including listings) to Buyer.

H-DSC-03 INDEMNIFICATION AGAINST UNUSUALLY HAZARDOUS RISKS

The legal authorities to indemnify Sellers for unusually hazardous risks are 10 USC 2354 (for research, development and testing activities) and 50 USC 1431 (Public Law 85-804), as implemented in Executive Order 10789. Previous indemnification from other contracts does not carry over to this resulting contract. Seller may request indemnification for effort under this contract at any time. Seller requests for indemnification must be prepared IAW the requirements of FAR 50.104-3. Buyer will fairly process request(s) in good faith to the applicable approving authority within the Department of Defense. However, Buyer will not, if indemnification is not granted through this process, make adjustments to the estimated cost or schedule of this contract.

H-DSC-07 RENT-FREE NON-INTERFERENCE USE OF GOVERNMENT PROPERTY

Seller may use on a rent-free, non-interference basis and in an "as is" condition as necessary for the performance of this contract, the Government property accountable under contracts HQ0006-01-C-0001, HQ0147-09-C-0007, and HQ0147-09-C-0008. Seller is responsible for scheduling the use of all property covered by the referenced contract and providing timely written notification to Buyer of any conflicts, delays, or disruptions to any work performed by the Seller due to use of any or all of such property under this contract or any other contracts under which use of such property is authorized. The Seller will not be relieved of its contractual responsibilities if for any reason Government Property is not available or is not functioning or suitable for the contractor's intended purpose.

H-DSC-09 INSERTION OF LIMITED OR RESTRICTED RIGHTS INTO THE GMD PROGRAM

Hardware items which are subject to Limited Rights in their associated technical data as defined in DFARS 252.227-7013 and software items which are subject to Restricted Rights as defined in DFARS 252.227-7014 shall not be incorporated into the design of the GMD weapon system or models/simulations thereof under this contract without the prior written authorization of the PCO. Seller's request shall include a rough order of magnitude (ROM) estimate to perform development if the data or software cannot be used as requested. If Buyer does not provide a decision within 60 days of the request, the request is considered denied. In the event Buyer authorizes inclusion of the Limited Rights technical data and/or Restricted software, such data or software will be added as an Attachment. Using Government assets in an Independent Research and Development (IRAD) project may be authorized on a case by case basis. Seller's request shall include an offer of consideration for use of such Government assets. Buyer will evaluate the request, including the Seller's offer of consideration, and either approve, deny, or offer an alternative form of consideration. Any such consideration will be mutually agreed to by the parties prior to use of Government assets. Consideration should include, at a minimum, specially negotiated rights granting the Government a license for Government Purpose Rights IAW DFARS 252.227-7013 and 252.227-7014 in the subject IRAD project. When the Seller requests the use of Government assets for an IRAD project, the request shall include the purpose of the IRAD project and the potential benefit to the Government. The Seller will be required to execute a bailment agreement prior to the transfer or use of Government assets.

H-DSC-10 COST ESTIMATING METHODS

The following cost estimating methods shall be used as requested by the Government:

- a. Planning Estimate - The purpose of a planning estimate is to support Government planning. Planning estimates may only be requested by the Buyer. A planning estimate shall be provided in 1-2 calendar days. This estimate is very limited in scope, involves minimal pricing ground rules and assumptions from the Government, and is generally comprised of ranges/parametrics. Documentation provided shall be high level scope and funding estimates by Government fiscal year sent via email.
- b. Rough Order of Magnitude (ROM) - The purpose of a ROM estimate is to support Government budgetary decisions and potential authorization of unpriced actions in the event there is insufficient time for a Not-to-Exceed (NTE) estimate. ROM estimates may only be requested by Buyer. ROM estimates shall be provided to the Government within 5 calendar days. This non-binding estimate is limited in scope, involves limited analysis, and develops a high level baseline to include a high level SOW, schedule, and equipment lists. The ROM estimate is not generated based on formal Basis of Estimates (BOEs) and by design provides limited supporting rationale. Subcontractor input will be included if schedule allows. Documentation provided shall include scope and funding estimates by Government fiscal year in a briefing package submitted by contracts letter to Buyer.
- c. Not-to-Exceed (NTE) - The purpose of an NTE estimate is to support critical Government budgetary decisions, and a binding basis on which to issue unpriced actions. NTEs may only be requested by Buyer. NTE estimates shall be provided to Buyer within 10 calendar days or as designated by Buyer. This estimate involves more in depth analysis, develops a baseline to include a statement of work, schedule, and required equipment lists. The NTE estimate shall be based on Basis of Estimate (BOEs) and estimated materials (as required), including supporting rationale. Applicable subcontractor input shall be included as required. Documentation required shall include scope and funding estimates by Government fiscal year in a briefing package submitted by Seller. Seller's NTE must be valid for a minimum of one hundred eighty (180) calendar days.

H-DSC-11 IMPACT OF GOVERNMENT TEAM PARTICIPATION/ACCESS

Under the Government/Buyer organizational/interface approach (e.g., Integrated Product Team (IPT), Team Execution Review (TER), Technical Interchange Meeting (TIM), and/or Working Groups), Government personnel will frequently interface with Buyer and Seller/subcontractor team members during contract performance. For this purpose, Buyer has authorized the Government to communicate and, where appropriate, visit and monitor directly, and, in some instances, exclusively, with Seller and Seller's subcontractors. The Government shall endeavor to provide advance notice to Buyer and Seller. This access/interface is necessary to support the

Government's quality management approach, which emphasizes systematic surveillance and evaluation techniques used to assess Seller/subcontractor performance stipulated in its Quality Assurance Surveillance Plan (QASP). Government team members may offer advice, information, support, clarification, and/or facilitate rapid Government feedback and approval of team-related products, as well as review Buyer and Seller/subcontractor progress; however, the responsibility and accountability for successfully accomplishing the requirements of this contract remain solely with the Seller. Seller shall not construe such advice, information, surveillance observations, reviews and clarifications by the Government team members as Government-directed changes to the terms of this contract. The Boeing Procurement Agent is the only individual who is authorized to direct or approve any change to the terms of this contract.

H-DSC-12 CONTRACTOR IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT'S USE, RELEASE, OR DISCLOSURE OF NON-COMMERCIAL TECHNICAL DATA OR COMPUTER SOFTWARE

The Seller and its subcontractors shall provide a completed Attachment in accordance with DFARS 252.227-7017 entitled "Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software" that is signed and dated by a responsible official of the Contractor. The Attachment(s) (Attachment 24 –Contractor Assertion of Rights In Technical Data-Noncommercial Items and Attachment 25 – Contractor Assertion of Rights in Noncommercial Computer Software and Noncommercial Software Documentation) are incorporated herein by reference as if fully set forth. The Attachment(s) identifies and provides information pertaining to technical data (including computer software documentation) and computer software that the contractor and subcontractors claim to qualify for delivery with less than Unlimited Rights. The contractor agrees not to withhold delivery of the technical data or software based on its claims. The Government shall investigate the validity of the contractor's claims and therefore reserves all its rights regarding the technical data/software in question, to include those rights set forth in: DFARS 252.227-7013 Rights in Technical Data -Noncommercial Items (Nov 1995); DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Jun 1995); DFARS 252.227-7019 Validation of Asserted Restrictions--Computer Software (Jun 1995); DFARS 252.227-7028 Technical Data or Computer Software Previously Delivered To the Government (Jun 1995); and, DFAR 252.227-7037 Validation Of Restrictive Markings On Technical Data (SEP 1999) clauses until a determination is made. The Seller shall have, maintain, and follow written procedures sufficient to assure that restrictive markings/legends are used only when authorized by the terms of this contract and shall maintain records sufficient to justify the validity of any restrictive markings/legends on any technical data or computer software or computer software documentation delivered under this contract. Seller agrees that the Government has Unlimited Rights as defined by DFARS 252.227-7013 and 252.227-7014 in any deliverable technical data or computer software or computer software documentation not listed in the Attachment and that such data or software will not be subject to any restrictive markings or legends.

H-DSC-13 TEST SCHEDULE ADJUSTMENTS

Adjustments made to contract price due to a change in the ground and/or flight and/or other test schedule will be accomplished as set forth below:

A change to the test schedule means the movement of a test from one test window to the next. A test window is defined as a period of time 90 days before or after the test date as it appears in the Integrated Master Test Plan (IMTP) or a Target of Opportunity published schedule. The movement of a test within a test window will not be grounds for an adjustment to the contract price. Test schedule changes outside of the original test window caused by the Seller or the Government may result in a downward or upward adjustment to the contract price. A change that is beyond the control and without the fault or negligence of the either party will not result in an adjustment to the contract price.

H-DSC-14 PROPERTY NECESSARY TO PERFORM THE CONTRACT

(a) The contract costs reflect the Seller's provision of all property necessary to perform under a the contract. In the event that such Government property becomes available for use by the Seller to perform under the contract, cost will be subject to, at Buyer's discretion, a unilateral downward adjustment. Such an adjustment will be based on the proposed cost of the Seller provisioning the property less actual costs incurred as a direct charge to the Contract. An adjustment modification will be issued to reflect the Buyer's determination to adjust the contract cost.

(b) Seller disagreements with a determination made by Buyer pursuant to this clause shall be a dispute under the Disputes clause. However, nothing in this clause nor any Buyer determination made in conjunction with this clause shall excuse Seller from proceeding with its duties under the instant contract.

H-DSC-15 Seller Accountability for Quality

a) Definitions. as used in this clause—

“Command media,” as used in this clause, includes the SubContractor’s specifications, engineering drawings, test procedures, and other documentation generated to comply with Statement of Work (SOW) requirements ensuring repeatability in the products produced and services provided.

“ Nonconformance” as used in this clause means a condition of any hardware, software, material, or service/workmanship in which one or more characteristics do not conform to requirements.

"Quality escape," as used in this clause, means the SubContractor, or any of its subcontractors:

- (1) failed to detect a nonconformance or failed to follow command media; and
 - (2) said nonconformance or failure to follow command media could adversely affect the performance of a component, subsystem or system; and
 - (3) requires an action by the Seller to bring said item back to compliance with applicable specification requirements.
- (b) The rights and remedies afforded Buyer and Seller under this clause are in addition to any other provision of this contract.
- (c) Buyer may make an equitable reduction in any item performance incentive fee previously paid under the contract, or payable in the current fiscal year, if at any time during the term of this contract, including pre-acceptance or post-acceptance of any item or service required to be delivered or performed under this contract, Buyer reasonably determines that:
- (1) a quality escape occurred; and
 - (2) the quality escape was caused solely by Seller, or any of its subcontractors; and
 - (3) resulted in substantial harm to Buyer and/or the Government.

Buyer will notify the Seller within 30 days of determining a quality escape occurred for which an equitable reduction may result.

(d) Buyer will consider cost, schedule and performance impacts of the quality escape as well as any recovery and mitigation efforts by the Seller that are taken to reduce the impacts of the quality escape, in deciding whether to make such a reduction. Failure to agree to the reduction in performance incentive fee shall be a dispute under the Disputes Clause of the Contract.

Reductions associated with quality escapes shall apply to future DSC deliveries and shall not be levied against hardware and software delivered under the current contracts (HQ0006-01-C-0001 & HQ0147-09-C-0008)