

**CUSTOMER CONTRACT REQUIREMENTS
PRELIMINARY CONCEPTS FOR HUMAN LUNAR EXPLORATION AND CREW
EXPLORATION VEHICLE
CUSTOMER CONTRACT NNT04AA00C**

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, 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 (JUL 1995). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). Buyer may withhold 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 \$100,000.

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 \$100,000. 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.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 2003). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) 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.

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

52.209-6 Protecting the Gov.'s Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (JUL 1995). Paragraph (b) is deleted. In paragraph (c), "Contracting Officer" is changed to "Buyer's Authorized Purchasing Representative".

52.215-2 Audit and Records - Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 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.

52.215-15 Pension Adjustments and Asset Reversions (JAN 2004). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

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).

52.219-8 Utilization of Small Business Concerns (OCT 2000).

52.219-9 Small Business Subcontracting Plan (JAN 2002). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern.

52.222-1 Notice to Government of Labor Disputes (FEB 1997). "Contracting Officer" shall mean Buyer.

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

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.225-13 Restrictions on Certain Foreign Purchases (DEC 2003).

52.227-1 Authorization and Consent (JUL 1995).

52.227-1 Alternate I (APR 1984).

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

52.227-11 Patent Rights - Retention by the Contractor (Short Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JUN 1997). This clause only applies if this Contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

52.227-14 Rights in Data — General (JUN 1987) – as modified by NASA FAR Supplement 1852.227-14. This clause applies only if data will be produced, furnished or acquired under this contract.

52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if this contract involves experimental, developmental, research, or demonstration work.

52.230-6 Administration of Cost Accounting Standards (NOV 1999). Add "Buyer and the" before "Contracting Officer in paragraph (f). This provision applies if Clause H001, H002 or H004 is included in Buyer's contract.

52.239-1 Privacy or Security Safeguards (AUG 1996).

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

52.244-5 Competition in Subcontracting (DEC 1996)

2. **NASA FAR Supplement Clauses.** The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" means Seller. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

18-52.204-76 Security Requirements for Unclassified Information Technology Resources (JUL 2002). This clause applies to all or any part of this contract that includes information technology resources or services in which Seller must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency.

18-52.208-81 Restrictions on Printing and Duplicating (OCT 2001).

18-52.219-74 Use of Rural Area Small Businesses (SEP 1990). This clause applies only if this contract offers subcontracting possibilities.

18-52.219-75 Small Business Subcontracting Reporting (MAY 1999). This clause applies if FAR 52.219-9 is included in this contract.

18-52.219-76 NASA 8 Percent Goal (JUL 1997). This clause applies only if Seller is not a small business.

18-52.223-70 Safety and Health (Apr 2002). This clause applies only if this contract exceeds \$1,000,000 or construction, repairs or alteration in excess of \$100,000, or it involve the use of hazardous materials or operations.

18-52.223-74 Drug and Alcohol-Free Workforce (MAR 1996). This clause applies to Seller if work is performed by an employee in a sensitive position.

18-52.223-75 Major Breach of Safety or Security (FEB 2002). This clause applies only if this contract exceeds \$500,000.

18-52.225-70 Export Licenses (FEB 2000).

18-52.227-14 Rights in Data — General. This clause applies only if data will be produced, furnished or acquired under this contract except contracts for basic or applied research with universities or colleges.

18-52.227-71 Requests for Waiver of Rights to Inventions (APR 1984).

18-52.227-72 Designation of New Technology Representative and Patent Representative (JUL 1997). The New Technology Representative is Robert Norwood, Code R, NASA Headquarters, Washington, DC 20546.

18-52.244-70 Geographic Participation in the Aerospace Program (APR 1985). This clause applies only if this contract is for \$100,000 or more.

18-52.245-70 Contractor Requests for Government-Owned Equipment (JUL 1997) [excluding paragraph (b)(3)]. "Contracting Officer" shall mean Buyer. If the equipment is to be acquired as Special Test Equipment (STE), Seller shall submit the applicable request 75 days in advance of the date Seller intends to acquire the equipment. No later than 30 September of each year, Seller will provide Buyer a list of all property acquired under this clause. The list will include at a minimum: (1) part number; (2) serial number; (3) modification number, if any; (4) nomenclature; (5) acquisition cost; (6) acquisition date; and (7) the date of the prior year's list.

3. **Commercial Items.** If goods or services being procured under this contract are for commercial items and Clause H203 is set forth in the purchase order, all of the foregoing Government clauses in Sections 1 and 2 remain in effect. FAR 52.244-6, Subcontracts for Commercial Items, is not in the prime contract and therefore can not be included in this contract.

4. **Cost Accounting Standards**

- (1) (Applicable if this contract incorporates clause **H001**). The version of **FAR 52.230-2**, Cost Accounting Standards, incorporated by clause H001 is the version dated April 1998.

- (2) (Applicable if this contract incorporates clause **H002**). The version of **FAR 52.230-3**, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated April 1998.

- (3) (Applicable if this contract incorporates clause **H003**). The version of **FAR 52.230-4**, Consistency in Cost Accounting Practices, incorporated by clause H003 is the version dated August 1992.

- (4) (Applicable if this contract incorporates clause **H004**). The version of **FAR 52.230-5**, Cost Accounting Standards – Educational Institution, incorporated by clause H004 is the version dated April 1998.

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

- A. **Data Subject to Restrictions.** Data resulting from this research activity may be subject to export control, national security restrictions or other restrictions designated by NASA; or, to the extent the Seller receives or is given access to data necessary for the performance of the contract which contain restrictive markings, may include proprietary information of others. Therefore, the Seller shall not publish, release, or otherwise disseminate, except to Buyer or NASA, data produced during the performance of this contract, without prior review by Buyer or NASA. Should the Seller seek to publish, release, or otherwise disseminate data produced during the performance of this contract, the Seller may do so once Buyer or NASA has completed its document availability authorization review and the availability of the data has been determined. {This clause drafted to implement Prime Contract 17 paragraph (e).}

- B. **CEV Advanced Agreement Rights In Data Clause**

- (1) Data rights under the contract will be in accordance with FAR 52.227-14 Rights in Data General. In addition, the Government has agreed to protect the competitive nature of the Buyer's and the Seller's design solutions under Concept Area 2 only, relating to the Crew Exploration Vehicle (CEV) until the Government downselects to a single CEV contractor or September 30, 2006, whichever is later.

- (2) Notwithstanding the above, the Government has the right to use all unlimited rights data for the defining, deriving, and/or validating CEV requirements. However, the Government has assured the Buyer the Government will not incorporate the Buyer's or the Seller's specific design solutions into such requirements.

- (3) Data protected as "Competition Protected" in accordance with paragraph (1) of this clause shall not be intermingled with the other established unlimited data. The "Competition Protected" data shall be marked clearly with the following notation:

COMPETITION PROTECTED IN ACCORDANCE WITH NASA CONTRACT NUMBER NNT04AA00C

These data may be reproduced and used by the Government with the express limitation that the data will not, without permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government, except that the Government may disclose these data outside the Government upon the Government's down selection to a single Crew Exploration Vehicle (CEV) contractor or September 30, 2006, whichever is later.

{This clause drafted to implement Prime Contract clause 20.}

C. Limited Release of Contractor Confidential Business Information

- (1) NASA may find it necessary to release information submitted by the Seller, pursuant to the provisions of this contract, to individuals not employed by NASA. Business information that would ordinarily be entitled to confidential treatment may be included in the information released to these individuals. Accordingly, the Seller hereby consents to a limited release of the Seller's confidential business information (CBI).
- (2) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to, the following:
- (A) To other Agency contractors and subcontractors, and their employees tasked with assisting the Agency in handling and processing information and documents in the evaluation, the award or the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to NASA's technical evaluation panels;
 - (B) To NASA contractors and subcontractors, and their employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency.
- (3) NASA recognizes its obligation to protect the Buyer and the Seller from competitive harm that could result from the release of such information to a competitor. Except where otherwise provided by law, NASA will permit the limited release of CBI under subparagraphs (1) or (2) only pursuant to non-disclosure agreements signed by the assisting contractor or subcontractor, and their individual employees who may require access to the CBI to perform the assisting contract).
- (4) NASA's responsibilities under the Freedom of Information Act are not affected by this clause.
- (5) The Seller agrees to include this clause, including this paragraph (5), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

{This clause drafted to implement Prime Contract clause 21.}

D. Option To Extend the Term of the Contract

- (1) The Buyer may extend the term of this contract by written notice to the Seller within a reasonable time after Buyer's receipt of written notice from the Government. The Government has agreed to give the Buyer a preliminary written notice of its intent to extend at least 15 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (2) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (3) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 1 Year.
- (4) The Government may exercise the option in its entirety or in increments of one month or more.

{This clause drafted to implement Prime Contract clause 22.}

- E. **Notification Of Debarment/Suspension Status.** Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from NASA or any Department of Defense (DoD) Agency, during the performance of this Contract.

F. **Export Controlled Data Restrictions**

- (1) For the purpose of this clause,
 - (A) **Foreign person** is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;
 - (B) **Foreign representative** is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
 - (C) **Foreign sources** are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.
- (2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.
- (3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.
- (4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).