

**CUSTOMER CONTRACT REQUIREMENTS
AWACS E-3D Post Design Services
CUSTOMER CONTRACT SMC23A/1171**

A. CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. In all of the following clauses, “Contractor” and “Offeror” mean Seller.

1. SECURITY MEASURES (Applicable only to U.S. Contractors)

(a) The provisions of this clause are based upon an Agreement between the Government of the United Kingdom and the Government of the United States and shall apply to the extent that this Contract involves access to or possession of information to which a security classification has been assigned by the Government of the United Kingdom.

(b) The Government of the United Kingdom shall assign a security classification to each of the aspects of classified information which is furnished, or which is to be developed, under this Contract and shall advise the Defense Investigative Services, Attn: Deputy Director (Industrial Security) of such aspects and their security classification. If classified information is disclosed orally pursuant to a visit to the Seller by or on behalf of the Government of the United Kingdom, the Seller shall be informed of such security classification. The Defense Investigative Service (DIS) shall ensure that appropriate classification guidance is obtained for each aspect of United Kingdom (UK) classified information which is furnished, or which is to be developed, under the Contract and that such information is assigned an equivalent United States (U.S.) security classification. The Government of the United Kingdom shall keep current all security classifications, and inform the Defense Investigative Service, Attn: Deputy Director (Industrial Security) of any changes thereto. Each classified aspect of this Contract shall be safeguarded by the Seller as U.S. classified information of an equivalent security classification category as set forth in the following table of equivalent security classification categories.

Table of Equivalent Security Classification Categories

<u>United Kingdom</u>	<u>United States</u>
UK TOP SECRET	TOP SECRET
UK SECRET	SECRET
UK CONFIDENTIAL	CONFIDENTIAL
UK RESTRICTED	* NO EQUIVALENT

* UK Restricted Information shall be safeguarded in accordance with Department of Defense National Industrial Security Program Operating Manual (NISPOM), DoD 5220.22-M dated January 1995.

Such information shall be subject to the provisions of U.S. laws and regulations. Classified information produced or reproduced in the U.S. in connection with UK classified Contracts shall be marked with the assigned classification markings of both countries as provided. The markings shall be applied in the manner prescribed in the regulations of the country in which the information is produced or reproduced.

(c) The Seller shall make no use of any U.S. classified information in connection with this Contract, except with the express written authorization of the U.S. agency responsible for the U.S. classified information.

(d) UK classified information furnished or developed in the performance of the contract shall not be used for any other purpose without the express written authorization of the UK agency responsible for the UK classified information.

(e) To the extent that aspects of this Contract have been or may be assigned a security classification as provided in the aforementioned table of equivalent security classification categories, the Seller shall safeguard all classified aspects of this Contract and shall provide and maintain a system of security controls with his own organization in accordance with the requirements of:

- (1) The Department of Defense Security Agreement (DD Form 441) between the Contractor and the Government of the United States, including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this Contract; and
- (2) Any amendments to said Manual made after the date of this Contract, notice of which has been furnished to the Seller by the Cognizant Security Office.

(f) Representatives of the Cognizant Security Office shall be authorized to inspect at reasonable intervals the procedures, methods and facilities used by the Seller in complying with the security requirements under this Contract as locations within the U.S. Should the Government of the United States determine that the Seller is not complying with the security requirements of this Contract, the Seller shall be informed in writing through the Cognizant Security Office of the proper action to be taken in order to effect compliance with such requirements. When UK classified material is, or is likely to be, at risk D HQ Sy will be advised accordingly.

(g) If subsequent to the date of this Contract, the security classifications or security requirements under this Contract are changed by the Government of the United Kingdom or by the Government of the United States and the security costs under this contract are increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increase or decreased costs.

(h) The Seller agrees to insert security provisions which conform substantially to the language of this clause, including this paragraph in all subcontracts awarded to the U.S. contractors hereunder which involve access to classified information. In the event the U.S. Contractor proposes to award a subcontract to other than a U.S. contractor, prior permission must be obtained from the Government of the United Kingdom, which, if it approves of such a contract, will provide an appropriate security requirements clause.

(i) The Seller also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to UK classified information in the U.S. Contractor's custody has:

- (1) If located in the U.S., a current U.S. Department of Defense facility security clearance at the appropriate level and the ability to safeguard classified information properly prior to being afforded access to such classified information; and
- (2) If located in any other country, been approved by the government of the United Kingdom to have access to its classified information prior to being afforded such access.

2. SPECIAL JIGS, TOOLS, ETC. (DEFCON 23)

(a) The Seller shall provide such jigs, tools, moulds, dies and manufacturing gauges as are essential to enable the articles specified in the schedule to the Contract to be produced in accordance with the Contract requirements and within a scale approved by the Buyer whose representative shall be given facilities to enable him to verify the need for provision on the scale proposed before manufacture is commenced.

(b) The Seller shall maintain a separate register of the jigs, tools, etc., provided for the production of the supply to which this Contract relates. Such register shall include particulars of additions or alterations to the jigs, tools, etc., after the initial provision, and shall show clearly that the jigs, tools, etc., referred to are held at the disposal of the Secretary of State for Defense and that the register may not be destroyed or defaced without the consent of the Buyer. The register shall be available at all reasonable times for inspection by the authorized representative of the Buyer, the UK and of the Comptroller and Auditor General. The transfer of any jigs, tools, etc., from the custody of the Seller must be properly recorded in the appropriate register and vouchers (receipts) must be obtained in support of the transfer of jigs, tools, etc., to any other individual, Company, Factory or Government Establishment.

(c) The Buyer reserves the right to require the Seller to furnish a copy of the register of jigs, tools, etc., within a specified period.

(d) The Seller shall maintain and retain the jigs, tools, etc., in good order, until instructions for their disposal are given by the Buyer. The Seller shall, as and when required, furnish to the Buyer such certificates as to the

existence and condition of the tools, etc., as will satisfy the Buyer that they are in good order and available for further use, and shall afford reasonable facilities to the representative of the Buyer to inspect the jigs, tools, etc.

(e) (a) The price paid for the articles to be supplied under this Contract shall include an appropriate amount to enable the Seller to recover his expenditure on the jigs, tools, etc., provided in accordance with paragraph 'i' above.

(b) The UK acting through the Buyer reserves the right to require the Seller to deliver the jigs, tools, etc., to such individual, Company, Factory or Government Establishment as may be named by the Buyer, without further payment except in respect of such charges for packing, carriage, etc., as may be reasonably incurred and on such delivery the Seller's liability in respect of their maintenance will be terminated. This condition shall not, however, entitle the Buyer to require the Seller to surrender the jigs, tools, etc., to the prejudice of orders held by the Seller for the articles specified in the schedule.

(c) If the jigs, tools, etc., are used by the Seller for manufacture to the order of anyone other than the Secretary of State for Defense, the United Kingdom shall be entitled to payment for such use; the amount shall be decided in the light of the circumstances of each case.

(f) When the jigs, tools, etc., cease to be required for production against a Ministry of Defense Contract held by the Seller, he shall report accordingly to the Buyer, who will instruct the Seller as to their disposal.

3. DEFCON 76 (Applies only if work will be performed on U.K. Government Installations)

DEFCON 76 (Edn. 10/97), "General Conditions of Contract Applicable to Work Performed by Contractor's Personnel at Government Establishments," is incorporated by reference. The Seller's limitation of liability for any one incident under DEFCON 76 shall be £10,000,000.

4. INTELLECTUAL PROPERTY RIGHTS

(a) Intellectual Property Rights. Subject to the rights of third parties and to the rights of the UK arising otherwise than under this Contract and to the provisions of this clause, all intellectual property subsisting in the results of the work done under this Contract shall belong to the Seller.

(b) Patents and Security Classification.

(1) If the Seller or any person employed by him, whether under subcontract or otherwise, applies in any country for patent or similar protection for any invention or design made in the course and as part of work performed under this Contract, the Seller shall within thirty days of such application furnish to the Ministry of Defense (D/IPR, Procurement Executive, Poplar, MoD Abbey Wood 19, P.O. Box 702, Bristol BS1 7DU, United Kingdom) the application serial number, the filing date, the name of the Applicant and a copy of the application as filed, quoting the number of the Buyer's prime contract. Under any such protection granted any UK Government Department and any person authorized by a UK Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(1)(a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom and the Seller shall not be entitled to any payment whatsoever in respect of the doing of such an act or the use of the design. The Seller shall, in addition, not be entitled to claim compensation payable directly or indirectly by the Buyer in respect of a secrecy order imposed by a Patent Office or Government (upon any such invention or design). The rights conferred by this Clause shall be in addition to and not in derogation of rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.

(2) Pending formal determination of its security classification, the preparation and filing of an application for patent or similar protection shall be handled under conditions of security appropriate to related work under the Contract. Any application made in the United Kingdom for patent or similar protection shall be sent direct to the Security Section of the Patent Office, or other appropriate office, state that the application is related to work being carried out under a Ministry of Defense security classified contract and quote the number of the Contract.

(c) Rights to Other Intellectual Property.

(1) In addition to its rights under 2 above, the Buyer and the Authority shall have the right to copy, to use and to authorize others to use, any Technical Data provided pursuant to the "Maintenance and Supply of E-3D Technical Data" clause hereof for the purposes of the UK AEW Programme. The Buyer and the

Authority shall have the further right to copy, to use, and to disclose, in whole or in part, in any manner and for any purpose whatsoever, any Technical Data pertaining to items which have first been developed in the performance of this contract and which Technical Data is required to be delivered to the Buyer and the Authority by the terms of this contract.

(2) The Seller grants the Buyer and the Authority the right to copy, use and modify information furnished by the Seller hereunder comprising computer software source code, on the further condition that it is used solely for the purpose of maintenance and/or modification of the software for the Sentry AEW Mk1 (E-3D) Programme. The Buyer and the Authority acknowledge that source code may only be provided for that computer software owned by the Seller.

(3) Subject to the proviso at the end of this Clause, if the Seller includes in any information furnished under the Contract commercially or industrially confidential Data arising from work performed otherwise than under this Contract or any other contract funded by the United Kingdom, the Seller shall identify such Data by applying an appropriate restrictive legend which the Buyer and the United Kingdom shall respect and which shall be perpetuated on any copies of that Data. Accordingly, the Buyer and the United Kingdom shall not disclose such Data to any third party except, UK Government Departments or Sentry AEW Mk1 (E-3D) System In-Service Support bidders and contractors in accordance with the terms of this Paragraph (3)(c) and Paragraph (4), or use such data except in accordance with those terms. If, in the exercise of its rights under Paragraph (4) below, the Buyer or the United Kingdom wishes to disclose such data to other than UK Government Departments, the Buyer or the United Kingdom shall inform the Seller of the data to be disclosed and the party to whom the Buyer or the United Kingdom intends to disclose the data and will, in addition, apply Standard Condition 31 of Form GC/Stores/1 (Edition April 1979) (or its equivalent) provisions to any bidder and in any contract under which such a disclosure will be made. Further, the Buyer and the United Kingdom shall prohibit reproduction and disclosure of Seller's commercially or industrially confidential data by bidders and contractors, and shall prohibit incorporation of such data into other documents except as necessary to submit a bid or perform under a contract, and the Buyer and the United Kingdom shall require all recipients of the Seller's commercially or industrially confidential data to perpetuate an appropriate restrictive legend identifying the Seller as the owner of that data on all other documentation submitted as part of a bid or delivered under a contract except that the obligations of this Clause shall not apply to the Buyer or the United Kingdom when any such data

(i) is already known to the Buyer or the United Kingdom otherwise than by communication either directly or indirectly from the Seller;

(ii) is publicly known through no wrongful act of the Buyer or the United Kingdom;

(iii) is rightfully received by the Buyer or the United Kingdom from a third party without any obligation of confidence;

(iv) is subsequently developed by the Buyer or the United Kingdom through means independent of the information provided by the Seller;

(v) is furnished to a third party by the Seller without any restriction on that third party's right of disclosure;

(vi) is approved for release by written consent of the Seller.

(4) The Authority shall provide reasonable assistance to Seller in the Seller's efforts to reach a separate confidentiality agreement with any third party to whom the Buyer intends to disclose Seller's commercially or industrially confidential or the Authority data to such third party pursuant to (3)(c) above.

(d) Conditions of Use by the United Kingdom.

The rights in Seller-owned commercially or industrially confidential Technical Data provided under 3.3 above shall be exercisable free of any payment whatsoever to the Seller, and in particular without payment in respect of any intellectual property owned or controlled by the Seller, in the following circumstances, and subject to the following conditions:

(1) Such rights shall be exercisable solely for the purposes of the Sentry AEW Mk1 (E-3D) Programme whether within or outside the United Kingdom.

(2) Such rights shall include the right to provide Data for the purposes of defense collaboration between the UK and a third party Government or for the purposes of a reciprocal programme for the exchange of information between the United Kingdom and one or more nations of NATO or other nations with whom UK has treaty or similar obligations for mutual defense provided that such provision of Data shall not confer on the recipient any right of manufacture or production and on the condition that any recipient of

the Data agrees to receive it in confidence to the extent it contains Seller's commercially or industrially confidential data.

(3) Such rights shall include the right to provide Data to the United States Government, which comprises Data pertaining to changes, modifications and improvements in the design of the Sentry AEW Mk1 (E-3D) System and which make use of US Government unlimited rights technical data furnished to the UK in accordance with the UK/US AWACS Memorandum of Understanding. The Seller, without prejudice to Paragraph (3)(c), undertakes to mark with an appropriate legend any Technical Data that is either proprietary to it or is subject to US Limited Rights. Any technical Data not so marked may be regarded as subject to US Unlimited Rights.

(e) The Seller shall not assign or license any intellectual property in such a way as to prejudice the intellectual property rights granted in this Contract without the prior approval of the Buyer and the Authority.

(f) The Seller shall not sell otherwise than for the purposes of the Authority any articles, sub-assemblies, components or spare parts therefore which have been designed, developed or modified under this Contract or grant any license to manufacture otherwise than for the purposes of the Authority any such articles, sub-assemblies, components or spare parts therefore without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Seller in respect of such sale or grant having regard inter alia to the amounts paid or payable to the Seller under this Contract.

(g) Seller's Intellectual Property

(1) In the event that work is to be undertaken for the purposes of this contract by a subcontractor, and the United Kingdom does not wish to enter into direct contractual relations with that subcontractor, the Seller shall, unless the United Kingdom agrees otherwise, use reasonable endeavors to procure that in so far as legally possible the terms of the subcontract provide for the United Kingdom the same rights as against the subcontractor as are set out in this clause and impose on the subcontractor the same obligations (the necessary changes being made) as are imposed on the Seller in this Clause.

(2) The Seller shall obtain Buyer approval before placing any subcontract work involving research, design or development under this Contract. Requests for such approval shall be accompanied by two signed copies of the agreement set out in Annex J, attached hereto from the proposed subcontractor, or a statement by the Seller that the proposed subcontractor has refused to sign that agreement.

5. IMPORT DUTY (Applies if a subcontractor could import items into the United Kingdom)

Articles to which this Contract applies are Defense Equipment in respect of which the United Kingdom will waive the application of import duty provided that the U.K. Customs entry documents are completed by the appropriate UK agency. In order that such Articles may be readily identified, the Seller shall certify on all invoices and other consignment documents that they are in aid of the Sentry AEW Mk1 (E-3D) Programme, and shall quote the prime contract number. No import duty shall be included in the contract price. Subcontractors should be similarly instructed. If the Seller should be required to pay UK import duty, such amounts will be reimbursed by the Buyer, provided the Seller has complied fully with the requirements of this Clause.

6. EXPORT APPROVALS

The Seller shall not enter into a subcontract with a subcontractor in the U.K. for articles or services forming this contract, except on terms that the subcontractor shall not export from the UK (except to the Seller) any articles or services without the prior written approval of the Authority. A similar provision shall be placed in all subcontracts.

7. DEFINITIONS

The term "Authority," as used herein, is defined as the Secretary of State for Defence or his authorized representatives. For the purposes of this Contract authority is devolved through the Director of Contracts (RAF) to Deputy Director Support Management (Contracts 2) (RAF) [DDSM (C2) (RAF)] and his Contracts Branch CB/SMC 23 (RAF), who is the Authorized Representative for the Contract.

B. ADDITIONAL CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

1. PRICE FIXING (Applicable only if this contract is fixed price) (Standard Condition 43)

For the purpose of estimating the costs of production of the articles to be supplied under the main contract, the Seller shall, at all times before prices for those articles have been finally fixed, afford such facilities as the Buyer/UK may reasonably require for his representatives to visit the Seller's premises and examine any or all of the processes involved in, and the plans for, the manufacture of the articles to be supplied under this contract. In this Clause, the expression "the main contract" means the contract between the UK and the Buyer in connection with which, or for the purposes of which, this contract has been made.

2. PRICE FIXING (Applicable only if this Contract is other than fixed price) (Standard Condition 43)

(a) Fair and reasonable prices shall be paid to the Seller in respect of the articles to be supplied under this contract, such prices to be fixed as soon as practicable by agreement between the Buyer and the Seller.

(b) In the event of delay in fixing prices fair and reasonable, provisional prices shall be fixed by the Buyer and the Buyer reserves the right to alter from time to time the provisional prices so fixed. The Buyer shall pay to the Seller the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the Seller shall pay to the Buyer the amount by which any sum paid on the basis of provisional prices exceeds the sum payable on the basis of prices finally fixed. In the event of any alteration of the provisional prices, similar provisions for payment and repayment shall apply.

(c) The Seller shall, at all times before prices for the articles to be supplied under this contract have been finally fixed:

(1) maintain a record of such particulars of the costs of production of the said articles (including, for example, details of times taken and of wage rates paid) as may be available from his normal accounting procedures and of such further particulars of those costs as the Buyer/UK may from time to time reasonably require (including particulars of the costs of production of such substantial parts of any of the said articles as the Buyer/UK may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy;

Provided that a requirement under this paragraph shall not apply so as to impose any obligation on the subcontractor to maintain a record of any such further particulars as aforesaid in respect of any costs of production incurred before the date on which that requirement is made, and

(2) when requested by the Buyer/UK, furnish a summary of any of the costs mentioned in paragraph (a) above in such form and detail as the Buyer/UK may reasonably require; and

(3) afford such facilities as the Buyer/UK may reasonably require for his representatives to visit the Seller's premises and examine:

(i) any or all of the processes involved in the manufacture of the said articles in order to estimate the costs of their production, and

(ii) the records maintained under paragraph (a) above; and

(4) maintain and on request furnish such particulars of his plans for the manufacture of the said articles as the Buyer may reasonably require. Such particulars shall on request by the Buyer/UK be confirmed or brought up to date in any respect which might significantly affect the costs of production of the said articles.

(d) For the purpose of estimating the cost of production of the articles to be supplied under the main contract, the subcontractor shall, at all times before prices for those articles have been finally fixed (whether before or after the prices for the articles to be supplied under this subcontract have been finally fixed), afford such facilities as the Buyer/UK may reasonably require for his representatives to visit the Seller's premises and examine any or all of the processes involved in, and the plans for, the manufacture of the last-mentioned articles.

In this Clause, the expression "the main contract" means the contract between the UK and the Buyer in connection with which, or for the purposes of which, this contract has been made.

3. AVAILABILITY OF INFORMATION (Standard Condition 48)

(a) The Seller shall, at all times during the course of this contract and for a period of two years after final payment of all sums due under this contract or a period of three years after the final delivery under this contract, whichever period expires sooner, maintain:

(1) in accordance with his normal procedures, a record of:

(i) the manufacturing facilities and production plans employed by him for the supply of the articles under this contract; and

(ii) the costs incurred by him in the execution of this contract (including, for example, details of times taken and of wage rates paid); and

(2) a record of such further particulars of the costs of production of the said articles as the UK may from time to time reasonably require (including particulars of the costs of production of such substantial parts of any of the said articles as the UK may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy;

Provided that a requirement under this paragraph shall not apply so as to impose any obligation on the Seller to maintain a record of any such further particulars as aforesaid in respect of any costs of production incurred before the date on which that requirement is made.

(b) At any time after prices in respect of the articles to be supplied under this contract have been finally fixed and after delivery thereunder is substantially complete but within the period during which Paragraph (1) above applies the Seller shall, when requested by the UK:

(1) furnish a summary of any of the costs mentioned in the said Paragraph (1) in such form and detail as the UK may reasonably require; and

(2) afford such facilities as the UK may reasonably require for his representatives to visit the subcontractor's premises and examine the records maintained under that Paragraph.

(c) If at any time during the course of this contract the Buyer/UK notifies the Seller that the said records are required for the purpose of assisting the UK in fixing prices under any other contract (whether made or under negotiation) where the Seller is to supply articles of a similar or substantially similar kind either as a contractor to the UK or as a subcontractor to a contractor to the Buyer, the Seller shall:

(1) furnish the like summary and afford the like facilities as are mentioned in Paragraphs (2)(a) and (b) above; and

(2) afford such other facilities as the UK may reasonably require for his representatives to visit the Seller's premises and examine any or all of the processes involved in the manufacture of the articles to be supplied under this contract."

4. SECURITY MEASURES

Appendix to DEFCON 659 (Edn 9/97) is incorporated by reference.

5. SPECIAL JIGS, TOOLS, ETC.

(a) The Seller shall provide such jigs, tools, moulds, dies and manufacturing gauges as are essential to enable the articles specified in the schedule to the Contract to be produced in accordance with the Contract requirements and within a scale approved by the Buyer whose representative shall be given facilities to enable him to verify the need for provision on the scale proposed before manufacture is commenced.

(b) The Seller shall maintain a separate register of the jigs, tools, etc, provided for the production of the supply to which this Contract relates. Such register shall include particulars of additions or alterations to the jigs, tools, etc., after the initial provision, and shall show clearly that the jigs, tools, etc., referred to are held at the disposal of the Secretary of State for Defense and that the register may not be destroyed or defaced without the consent of the Buyer. The register shall be available at all reasonable times for inspection by the authorized representative of the Buyer, the UK and of the Comptroller and Auditor General. The transfer of any jigs, tools, etc., from the custody of the Seller must be properly recorded in the appropriate register and vouchers (receipts) must be obtained in support of the transfer of jigs, tools, etc., to any other individual, Company, Factory or Government Establishment.

(c) The Buyer reserves the right to require the Seller to furnish a copy of the register of jigs, tools, etc., within a specified period.

(d) The Seller shall maintain and retain the jigs, tools, etc., in good order, until instructions for their disposal are given by the Buyer. The Seller shall, as and when required, furnish to the Buyer such certificates as to the existence and condition of the tools, etc., as will satisfy the Buyer that they are in good order and available for further use, and shall afford reasonable facilities to the representative of the Buyer to inspect the jigs, tools, etc.

(e) (1) The price paid for the articles to be supplied under this Contract shall include an appropriate amount to enable the Seller to recover his expenditure on the jigs, tools, etc., provided in accordance with paragraph 'i' above.

(2) The UK acting through the Buyer reserves the right to require the Seller to deliver the jigs, tools, etc., to such individual, Company, Factory or Government Establishment as may be named by the Buyer, without further payment except in respect of such charges for packing, carriage, etc., as may be reasonably incurred and on such delivery the Seller's liability in respect of their maintenance will be terminated. This condition shall not, however, entitle the Buyer to require the Seller to surrender the jigs, tools, etc., to the prejudice of orders held by the Seller for the articles specified in the schedule.

(3) If the jigs, tools, etc., are used by the Seller for manufacture to the order of anyone other than the Secretary of State for Defense, the United Kingdom shall be entitled to payment for such use; the amount shall be decided in the light of the circumstances of each case.

(f) When the jigs, tools, etc., cease to be required for production against a Ministry of Defense Contract held by the Seller, he shall report accordingly to the Buyer, who will instruct the Seller as to their disposal.

6. DEFCON 76 (Applies only if work will be performed on U.K. Government Installations)

DEFCON 76 (Edn. 6/91), "General Conditions of Contract Applicable to Work Performed by Contractor's Personnel at Government Establishments," is incorporated by reference. Seller's liability shall be limited in accordance with any standard agreement that may exist between the U.K. Ministry of Defense and the Seller.

7. GENERAL CONDITIONS OF CONTRACT (DEFCON 23)

(a) DRAWINGS AND SPECIFICATIONS (PROPRIETARY ARTICLES)

(1) No change may be made to the product supplied under the terms of the Contract which affects, or is likely to affect, performance, quality, reliability, strength or interchangeability without the approval of the Buyer in writing.

(2) Component and unit interchangeability of parts and subunits constituting manufacturers' standard replacement shall be maintained.

(b) DRAWINGS AND SPECIFICATIONS (NON-PROPRIETARY ARTICLES)

(a) Any minor part or parts not shown on the drawings or mentioned in the Specifications but which are clearly necessary to the satisfactory completion of the work shall be deemed to be included in the Contract and no extra price will be allowed on account of such omission.

(b) No addition to or correction of the Drawings or Specifications may be made without the prior approval of the Buyer.

(c) FACILITIES TO BE PROVIDED BY THE SELLER The Seller shall provide, at no additional direct cost to the Buyer, such reasonable accommodation for representatives of the Buyer as the Buyer may require. Such representatives may include Technical Costs, Professional Accountancy and Equipment Accounting Officers of the Buyer. All accommodation provided shall be adequately furnished, lighted, heated and ventilated and shall include suitable cloak-room and telephone facilities.

(c) GOVERNMENT PROPERTY ISSUED TO CONTRACTORS

(1) If the Buyer issues to the Seller any government-owned material, components, instruments, etc., whether such issues are on loan or repayment, the Seller shall account for all such issues (including arisings therefrom) and shall maintain complete records of receipt and use or disposal. The Buyer may determine the form of the records and the extent of the information to be recorded therein and may require the Seller to comply with an approved stock recording scheme.

(2) The records shall be subject to audit by the Buyer, the United Kingdom and by the Comptroller and Auditor General, and shall also be available to authorized representatives of the Buyer and the United Kingdom for inspection or for the extraction of information. The records shall be retained for a period of three years after the Seller's completion of contract work.

(3) The right of the Buyer to reject Articles under the Contract shall in no way be prejudiced by or through the fact that the Articles in question may have been made from or include materials, components, instruments, etc., supplied by the Buyer.

(4) The Seller shall inform the Buyer if Government property not specified as issuable for the purpose is used by him in the manufacture of Articles under the Contract and shall pay a fair and reasonable price therefor.

(e) **RETENTION OF QUALITY CONTROL/INSPECTION RECORDS** Unless otherwise directed in the Contract, the Seller shall retain the quality control/ inspection records for a period of three years from completion of all work under the Contract, and shall make them available to the Buyer on request.

Exceptionally, when requested by the Seller, earlier disposal may be authorized in writing by the Seller if acceptable to the Buyer. At the end of the retention period, the Seller shall seek confirmation that the quality control/inspection records may be destroyed. If the Buyer wishes them to be retained, the Seller will make the necessary arrangements for their delivery to the Buyer.

(f) **MARKING OF ARTICLES** General guidance on the marking of Articles is contained in DEFSTAN 05-34. Unless otherwise directed, the Seller shall, if practicable, mark each Article clearly and indelibly in accordance with the requirements of the relevant specification or drawing. In the absence of such requirements, the Articles shall be marked with the MOD stock reference or alternative reference number shown in the Contract Schedule. Any marking method used shall not have a deleterious effect upon the strength or corrosion resistance of the Articles.

The marking shall include any serial numbers allocated to the Article and, if the Article has a limited shelf life, the cure date/date of manufacture expressed as required by the specification or drawing, or, in the absence of such requirement, as month (letters) and years (last two figures).

In some cases serial numbers will be allocated in the Schedule but, when allocated by the Seller, these shall be consecutive and shall not repeat any number allocated to similar articles supplied under previous Contracts.

Where because of its size or nature it is not possible to mark an Article with the required particulars, these should be included on the package or carton in which the article is packed.

(g) **NOTIFICATION TO SUBCONTRACTORS** (Contracts for non-proprietary articles only.) The Seller must notify to subcontractors the number of the Contract and this information must be passed down to each subcontractor concerned in the execution of the Contract no matter how remote the stage of subcontracting may be.

(h) **IMPORT LICENSE** If in the execution of the Contract, the Seller needs to import materials for which a license is required, the responsibility for applying for the license shall rest with the Seller.

(i) **DEVELOPMENT AREAS AND NORTHERN IRELAND** The Seller is asked to give consideration, as far as possible, to firms situated in Development Areas and Northern Ireland when placing subcontracts, with a view to assisting employment in these areas, whenever this can be done without increased cost to the Buyer. Lists of Development Areas may be obtained, free-of-charge, from Regional Offices of the Department of Industry.

(j) **SUBCONTRACTING TO SHELTERED WORKSHOPS** When placing subcontracts in the United Kingdom the Seller is asked to give consideration, as far as possible, to the placing of work on a competitive basis with workshops approved by the Department of Employment under the Disabled Persons (Employment) Acts 1944 and 1958. Details of the capabilities of these workshops are available from the Sheltered Employment Procurement and Consultancy Services (SEPACS), a unit of the Manpower Services Commission (SEPACS 20 Albert Embankment, London SE1 7ST Tel: 01-735-9431). The Seller is asked also to give similar consideration to prison workshops.

(k) **USE OF ASBESTOS** No asbestos of any type shall be incorporated into the Articles to be delivered except that in exceptional circumstances where it is considered essential to the satisfactory performance of the Articles or where the use of an alternative substance would be equally or more hazardous than using CHRYSOTILE (WHITE) Asbestos, then Chrysotile (White) asbestos may be incorporated in the Articles subject to the Seller obtaining prior written consent of the Buyer.

8. INTELLECTUAL PROPERTY RIGHTS

(a) **Intellectual Property Rights.** Subject to the rights of third parties and to the rights of the UK arising otherwise than under this Contract and to the provisions of this clause, all intellectual property subsisting in the results of the work done under this Contract shall belong to the Seller.

(b) **Patents and Security Classification.**

(1) If the Seller or any person employed by him, whether under subcontract or otherwise, applies in any country for patent or similar protection for any invention or design made in the course and as part of work performed under this Contract, the Seller shall within thirty days of such application furnish to the Ministry of Defense (D/IPR, Procurement Executive, Poplar, MoD Abbey Wood 19, P.O. Box 702, Bristol BS1 7DU, United Kingdom) the application serial number, the filing date, the name of the Applicant and a copy of the application as filed, quoting the number of the Buyer's prime contract. Under any such protection

granted any UK Government Department and any person authorized by a UK Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(1)(a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom and the Seller shall not be entitled to any payment whatsoever in respect of the doing of such an act or the use of the design. The Seller shall, in addition, not be entitled to claim compensation payable directly or indirectly by the Buyer in respect of a secrecy order imposed by a Patent Office or Government (upon any such invention or design). The rights conferred by this Clause shall be in addition to and not in derogation of rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.

(2) Pending formal determination of its security classification, the preparation and filing of an application for patent or similar protection shall be handled under conditions of security appropriate to related work under the Contract. Any application made in the United Kingdom for patent or similar protection shall be sent direct to the Security Section of the Patent Office, or other appropriate office, state that the application is related to work being carried out under a Ministry of Defense security classified contract and quote the number of the Contract.

(c) Rights to Other Intellectual Property.

(1) In addition to its rights under 2 above, the Buyer and the Authority shall have the right to copy, to use and to authorize others to use, any Technical Data provided pursuant to the "Maintenance and Supply of E-3D Technical Data" clause hereof for the purposes of the UK AEW Programme. The Buyer and the Authority shall have the further right to copy, to use, and to disclose, in whole or in part, in any manner and for any purpose whatsoever, any Technical Data pertaining to items which have first been developed in the performance of this contract and which Technical Data is required to be delivered to the Buyer and the Authority by the terms of this contract.

(2) The Seller grants the Buyer and the Authority the right to copy, use and modify information furnished by the Seller hereunder comprising computer software source code, on the further condition that it is used solely for the purpose of maintenance and/or modification of the software for the Sentry AEW Mk1 (E-3D) Programme. The Buyer and the Authority acknowledge that source code may only be provided for that computer software owned by the Seller.

(3) Subject to the proviso at the end of this Clause, if the Seller includes in any information furnished under the Contract commercially or industrially confidential Data arising from work performed otherwise than under this Contract or any other contract funded by the United Kingdom, the Seller shall identify such Data by applying an appropriate restrictive legend which the Buyer and the United Kingdom shall respect and which shall be perpetuated on any copies of that Data. Accordingly, the Buyer and the United Kingdom shall not disclose such Data to any third party except, UK Government Departments or Sentry AEW Mk1 (E-3D) System In-Service Support bidders and contractors in accordance with the terms of this Paragraph (c)(3) and Paragraph (d), or use such data except in accordance with those terms. If, in the exercise of its rights under Paragraph (d) below, the Buyer or the United Kingdom wishes to disclose such data to other than UK Government Departments, the Buyer or the United Kingdom shall inform the Seller of the data to be disclosed and the party to whom the Buyer or the United Kingdom intends to disclose the data and will, in addition, apply Standard Condition 31 of Form GC/Stores/1 (Edition April 1979) (or its equivalent) provisions to any bidder and in any contract under which such a disclosure will be made. Further, the Buyer and the United Kingdom shall prohibit reproduction and disclosure of Seller's commercially or industrially confidential data by bidders and contractors, and shall prohibit incorporation of such data into other documents except as necessary to submit a bid or perform under a contract, and the Buyer and the United Kingdom shall require all recipients of the Seller's commercially or industrially confidential data to perpetuate an appropriate restrictive legend identifying the Seller as the owner of that data on all other documentation submitted as part of a bid or delivered under a contract except that the obligations of this Clause shall not apply to the Buyer or the United Kingdom when any such data

(i) is already known to the Buyer or the United Kingdom otherwise than by communication either directly or indirectly from the Seller;

(ii) is publicly known through no wrongful act of the Buyer or the United Kingdom;

(iii) is rightfully received by the Buyer or the United Kingdom from a third party without any obligation of confidence;

(iv) is subsequently developed by the Buyer or the United Kingdom through means independent of the information provided by the Seller;

(v) is furnished to a third party by the Seller without any restriction on that third party's right of disclosure;

(vi) is approved for release by written consent of the Seller.

(4) The Authority shall provide reasonable assistance to Seller in the Seller's efforts to reach a separate confidentiality agreement with any third party to whom the Buyer intends to disclose Seller's commercially or industrially confidential or the Authority data to such third party pursuant to (3)(c) above.

(d) Conditions of Use by the United Kingdom.

The rights in Seller-owned commercially or industrially confidential Technical Data provided under 3.3 above shall be exercisable free of any payment whatsoever to the Seller, and in particular without payment in respect of any intellectual property owned or controlled by the Seller, in the following circumstances, and subject to the following conditions:

(1) Such rights shall be exercisable solely for the purposes of the Sentry AEW Mk1 (E-3D) Programme whether within or outside the United Kingdom.

(2) Such rights shall include the right to provide Data for the purposes of defense collaboration between the UK and a third party Government or for the purposes of a reciprocal programme for the exchange of information between the United Kingdom and one or more nations of NATO or other nations with whom UK has treaty or similar obligations for mutual defense provided that such provision of Data shall not confer on the recipient any right of manufacture or production and on the condition that any recipient of the Data agrees to receive it in confidence to the extent it contains Seller's commercially or industrially confidential data.

(3) Such rights shall include the right to provide Data to the United States Government, which comprises Data pertaining to changes, modifications and improvements in the design of the Sentry AEW Mk1 (E-3D) System and which make use of US Government unlimited rights technical data furnished to the UK in accordance with the UK/US AWACS Memorandum of Understanding. The Seller, without prejudice to Paragraph (3)(c), undertakes to mark with an appropriate legend any Technical Data that is either proprietary to it or is subject to US Limited Rights. Any technical Data not so marked may be regarded as subject to US Unlimited Rights.

(e) The Seller shall not assign or license any intellectual property in such a way as to prejudice the intellectual property rights granted in this Contract without the prior approval of the Buyer and the Authority.

(f) The Seller shall not sell otherwise than for the purposes of the Authority any articles, sub-assemblies, components or spare parts therefore which have been designed, developed or modified under this Contract or grant any license to manufacture otherwise than for the purposes of the Authority any such articles, sub-assemblies, components or spare parts therefore without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Seller in respect of such sale or grant having regard inter alia to the amounts paid or payable to the Seller under this Contract.

(g) Seller's Intellectual Property

(1) In the event that work is to be undertaken for the purposes of this contract by a subcontractor, and the United Kingdom does not wish to enter into direct contractual relations with that subcontractor, the Seller shall, unless the United Kingdom agrees otherwise, use reasonable endeavors to procure that in so far as legally possible the terms of the subcontract provide for the United Kingdom the same rights as against the subcontractor as are set out in this clause and impose on the subcontractor the same obligations (the necessary changes being made) as are imposed on the Seller in this Clause.

(2) The Seller shall obtain Buyer approval before placing any subcontract work involving research, design or development under this Contract. Requests for such approval shall be accompanied by two signed copies of the agreement set out in Annex A, attached hereto from the proposed subcontractor, or a statement by the Seller that the proposed subcontractor has refused to sign that agreement.

9. IMPORT DUTY

Articles to which this Contract applies are Defense Equipment in respect of which the United Kingdom will waive the application of import duty provided that the U.K. Customs entry documents are completed by the appropriate UK agency. In order that such Articles may be readily identified, the Seller shall certify on all invoices and other consignment documents that they are in aid of the Sentry AEW Mk1 (E-3D) Programme, and shall quote the prime contract number. No import duty shall be included in the contract price. Subcontractors should be similarly instructed. If the Seller should be required to pay UK import duty, such amounts will be reimbursed by the Buyer, provided the Seller has complied fully with the requirements of this Clause.

10. EXPORT APPROVALS

The Seller shall not export from the U.K. (except to the Buyer) any articles or services forming this contract without the prior written approval of the Authority. The Seller shall ensure that a similar restriction is contained in any lower tier subcontract.

11. YEAR 2000 COMPLIANCE (44.0)

- a. Any computer hardware, software, firmware or part thereof licensed, delivered or otherwise provided or modified for the use under this Contract shall be Year 2000 compliant. The expression "Year 2000 Compliant" shall have the meaning ascribed thereto in paragraph d, except where expressly stated to the contrary in the Contract or in the specific WAFs or Forms 714/715.
- b. Except where expressly stated to the contrary in a WAF, the Seller shall be under no liability for Year 2000 compliance in respect of Authority Furnished Property (AFP) (whether in the form of hardware, software or firmware). The Seller and the Buyer each undertake immediately to notify the other should either become aware of any way in which such AFP is not Year 2000 compliant.
- c. The Seller and the Buyer each undertake immediately to notify the other should either become aware of any way in which any hardware, software or firmware used on or in support of the UK E-3D fleet is not Year 2000 compliant and shall jointly consider what rectification action may be necessary. Liability for the costs of any such rectification shall be agreed between the Seller and the Buyer by reference to the provisions of paragraphs a and b.
- d. For hardware, software or firmware (collectively referred to as "System") to be Year 2000 compliant it must not, as a result of reference to or reliance upon any date related information or data, fail to function correctly and consistently on any date and at any time whether on, before or after the 1st of January 2000. Without limitation to the generality of the foregoing, in particular the system shall comply with the following:
 - (1) No value for the Current Date (i.e. the date known to the system and consisting of the current day, week, month, year and century) shall cause any interruption in the correct operation of the system;
 - (2) Processes involving the use of date information shall behave correctly and consistently and produce correct and consistent results when operating on dates before, on or after 1st January 2000 and in this respect, the use of algorithms and inference rules is permitted;
 - (3) Whenever date information is recorded, stored for retrieval, transmitted, exchanged or otherwise acted upon by the System it shall include a representation of century that is unambiguous;
 - (4) Whenever the system requires or allows user entry of date information the entry process shall be such that it is clear to the user:
 - (a) How to enter date information with the correct century; and
 - (b) Where only a 2 digit entry is required, exactly what value the system will assume for the century and how to override the assumption if necessary;
 - (5) The calendar used by the system shall accurately reflect that used within the United Kingdom and in particular the year 2000 must be recognized as a leap year, with twenty nine days in February 2000, and the result of any process to determine the day of the week shall recognize the 1st of March 2000 as a Wednesday.

12. PATENTS, ETC. (48.0)

- a. Under the provisions of Sections 55 and 56 of the Patents Act 1977, and Section 12 of the Registered Designs Act 1949, the Seller is hereby authorized for the purpose of tendering for or performing the Contract (but not otherwise) to use in accordance with the said provisions any invention or design to which the said provisions relate (hereinafter referred to as invention or design except as qualified by the parentheses in paragraph h of this Clause) the existence of which the Seller has notified to the Authority prior to the date of the Contract, and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- b. The Seller shall notify the Buyer as soon as possible after the date of the Contract of any invention or design to which the said provisions relate and of which the Seller becomes aware, the use of which, by the Seller, is likely to be required or to have been required for the purpose of the Contract, and which the Seller would not be or would not have been entitled to use without the authorization of the Buyer. Upon receipt of any such notification or upon the Authority itself becoming aware of any such invention or design the Authority, through the Buyer, shall:

(1) not unreasonably delay issue to the Seller of a written authorization in accordance with the provisions of Section 55 and 56 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949 if it appears that use by the Seller of such invention or design may have occurred.

(2) not unreasonably withhold or delay issue of such written authorization in respect of any future use under the Contract of any such invention or design unless the Seller and the Authority agree on appropriate action to avoid such use; and

(3) issue such written authorization where the owner (or his exclusive licensee) of any such invention or design takes or threatens in writing to take any action against the Seller in respect of the Seller's use or continued use under the Contract of any such invention or design.

c. The Authority shall meet all costs and liabilities reasonably incurred by the Contractor as a consequence of the notification, or of any agreed course of action, received or taken under the terms of paragraph b.

d. Where an authorization is given under paragraphs a or b, the Seller shall be released by Section 57 of the Patents Act 1977, and Section 12 of the Registered Designs Act 1949, from liability under any license, assignment, assignation or agreement to make any payments, whether by way of royalties, license fees or similar expense in respect of the Seller's use of any invention or design in accordance with paragraph a or paragraph b of this Clause, or the use of any model document or information relating thereto for the purpose of tendering for or performing the Contract.

e. No royalty, license fee or similar expense in respect of the use by the Seller of any invention or design mentioned in paragraph a or paragraph b of this Clause for the purpose of tendering for or performing the Contract, or in respect of the use by the Seller of any model, document or information mentioned in paragraph a or paragraph b of this Clause will be allowed as a proper item of cost incurred by the Contractor unless it shall have been specifically agreed to by the Authority and no such royalty, license fee or similar expense not so agreed shall be included in the Seller's tender, quotation, offer, acceptance or Contract Price. If any claim in respect of use or alleged use of any invention or design as is mentioned in paragraph a or paragraph b of this Clause is made against the Seller it shall be referred to the Authority.

f. The Seller shall within 3 months, or such additional time as may be agreed, of the date of the Contract supply the Authority with a statement setting out the details of any license or other agreement under which he would or might, but for the authorization of paragraph a or paragraph b of this Clause and the release from liability to make payment of paragraph d of this Clause, have been liable to make payment in respect of the use of any invention or design, or use of any model, document or information. Thereafter the Seller shall as soon as may be reasonably practicable upon entering into any license or other agreement as aforesaid after the date of the Contract and that license or other agreement is not included in the aforesaid statement supply the Authority with the details of such license or other agreement. If any claim for any such payment as is mentioned in paragraph d of this Clause is made against the Seller it shall be referred to the Authority.

g. If and insofar as the Seller has already given to the Authority any of the information required under paragraphs a, b, or f of this clause in connection with a previous contract it shall be sufficient for him to identify such contract and the letter giving such information.

h. The Seller shall not be entitled to claim or include as an element in his price any payment by way of royalty, license fee or similar expense for the use in the performance of this Contract of any invention (whether patented or not), design (whether registered or not), drawing, model, plan, document or information whether owned by the contractor or not, unless the payment has been specifically agreed to by the Authority.

i. In the event of the Seller placing any subcontract for the purpose of this Contract, the Seller shall request or shall require the subcontractor to request the Authority to confer on the subcontractor like authority in respect of the subcontract as is conferred on the Seller by paragraphs a and b of this clause in respect of the Contract and the Authority will, upon being so requested, confer upon the subcontractor such like authority, and the provisions of paragraphs a, d, e and h of this Clause shall apply to anything done by the subcontractor for the purpose of tendering for or performing the subcontract in like manner as those provisions apply to anything done by the Seller for the purpose of tendering for or performing the Contract.

j. The Seller shall incorporate in any subcontract for the purpose of this Contract provisions whereby there shall subsist between the Seller and the subcontractor rights and obligations in respect of the subcontract corresponding to those subsisting between the Buyer and the Seller in respect of the Contract by virtue of paragraphs b, f and g of this Clause and the Seller shall take all reasonable steps to secure that the subcontractor observes the obligations so imposed upon him and shall upon obtaining any information from the subcontractor in accordance with any provision so incorporated in the subcontract pass that information to the Buyer without delay.

13. DEFINITIONS

The term "Authority," as used herein, is defined as the Secretary of State for Defense or his authorized representatives. For the purposes of this Contract authority is devolved through the Director of Contracts (RAF) to Deputy Director Support Management (Contracts 2) (RAF) [DDSM (C2) (RAF)] and his Contracts Branch CB/SMC 23 (RAF), who is the Authorized Representative for the Contract.