

ADDITIONAL FUTURE COMBAT SYSTEMS SPECIAL PROVISIONS

H.16 EMPLOYMENT OF FORMER BUYER EMPLOYEES

- a. Seller will not employ any person who is a former employee of Buyer to perform work under this contract or in preparation of proposals for future work on the FCS Program, unless that person has worked for Seller for at least one year prior to commencement of such work.
- b. Buyer will waive this clause upon application by Seller if Buyer determines that the employment of such former Buyer employee would not violate any Buyer FCS Program directive.
- c. Seller will flow this clause down to its subcontractors at all tiers.

H.21 PROTECTION OF COMPETITIVE SENSITIVE INFORMATION

"Competition Sensitive FCS Information" (referred to as "CSI") means information that Buyer or a Subcontractor IPT Leader has determined would give a bidder in a Competitive Procurement a significant unfair advantage over other bidders in that Competitive Procurement, which Buyer or a Subcontractor IPT Leader has marked, or caused to be marked, with a label containing the phrase "Competition Sensitive FCS Information."

In the event that Seller's employees will either (i) create Competition Sensitive Information in connection with a proposed competitive subcontract procurement activity on which Seller or any other FCS subcontractor may be a bidder; or (ii) be exposed to Competition Sensitive Information provided by the Government, Boeing or any FCS subcontractor, then Seller will be required to first adopt a plan for protection and management of that information and mitigation of potential Organizational Conflicts of Interest reasonably acceptable to Boeing and train Seller's employees on the plan. Buyer's assistance in creating the plan is available upon request.

H.23 ORGANIZATIONAL CONFLICT OF INTEREST – COMPETITIVE PROCUREMENTS

- a. General. Buyer has adopted a policy of prohibiting subcontractors from conducting competitive procurements if any part of the subcontractor's organization intends to submit a proposal for that competitive procurement and requiring that such competitive procurements be conducted by Buyer (or a third party selected by Buyer). Seller agrees to further this policy by complying with the provisions of this clause H.23.
- b. Definitions
 - (1) "Competitive Procurement" means a procurement under this contract in which Seller will issue requests for proposal (hereinafter "RFP") to more than one potential subcontractor.
 - (2) "Notice of Intent" or "NOI" means Seller's written notice to Buyer that Seller intends or does not intend to (i) submit a proposal for a Competitive Procurement, (ii) enter into an agreement with a third party in which the third party agrees to subcontract work to Seller if the third party is awarded a contract under a Competitive Procurement, and (iii) prepare or assist in preparing a third party's proposal for a Competitive Procurement.
 - (3) "Seller" as used in this clause H.23 includes (i) all business organizations with which Seller may merge, join or affiliate, now or in the future, and in any manner whatsoever, or which hold or may

obtain, by purchase or otherwise, direct or indirect control of Seller, and (ii) Seller's parent organization (if any) or Seller's present or future subsidiaries, associates, or holding companies.

- (4) Seller is a "Conflicted Subcontractor" for a Competitive Procurement if Seller has submitted a NOI to Buyer for the Competitive Procurement and the NOI indicates that Seller intends to (i) submit a proposal for the Competitive Procurement, (ii) enter into an agreement with a third party in which the third party agrees to subcontract work to Seller if the third party is awarded a contract under the Competitive Procurement, or (iii) prepare or assist in preparing a third party's proposal for the Competitive Procurement.

c. Submission of NOI

- (1) Seller shall submit a NOI to Buyer for each Competitive Procurement as soon as practicable after the specifications and work statements for the Competitive Procurement are sufficiently developed as to allow Seller to determine whether it intends to submit a proposal for the Competitive Procurement, but in any case no later than seven (7) calendar days after the due date for the submission of comments from potential subcontractors on the draft RFP, or if Seller does not issue a draft RFP for the Competitive Procurement, no later than ten (10) calendar days prior to release of the final RFP.
- (2) If Seller's NOI for a Competitive Procurement indicates that Seller is a Conflicted Subcontractor, Seller shall provide with its NOI all RFP documents for the Competitive Procurement including, but not limited to, the latest specifications and work statements, any request for information (hereinafter "RFI") or draft RFP issued to potential subcontractors, comments received from potential subcontractors on any RFI or draft RFP, Seller's answers to questions asked by potential subcontractors, and a list of the potential subcontractors selected to receive the final RFP.
- (3) Despite any obligations or restrictions imposed by the Confidential, Proprietary and Trade Secret Information and Materials article of this contract, Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) shall have the right to use, disclose and reproduce all RFP documents submitted by Seller, and make derivative works thereof, for the purpose of conducting the Competitive Procurement including releasing the final RFP and awarding the subcontract to the selected source.

d. Seller is a Conflicted Subcontractor

If Seller's NOI for a Competitive Procurement indicates that Seller is a Conflicted Subcontractor, the following requirements and restrictions shall apply to the Competitive Procurement immediately upon Buyer's receipt of the NOI:

- (1) Buyer (or a third party selected by Buyer) shall conduct the Competitive Procurement including making the source selection decision and awarding the subcontract to the selected source.
- (2) Seller shall be prohibited from conducting or participating in the Competitive Procurement except as follows:
 - (a) Prior to the release of the final RFP, Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) and Seller may ask each other questions or seek clarifications relating to the Competitive Procurement.
 - (b) After the release of the final RFP, questions or requests for clarifications relating to the Competitive Procurement may be raised by Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) or Seller to the Government who will serve as an

intermediary between Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) and Seller.

- (c) After Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) makes the source selection decision, Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) may contact Seller for the sole purpose of consulting with Seller on any exceptions to Seller's model subcontract or standard terms and conditions taken by the selected source. Seller shall not contact the selected source concerning the Competitive Procurement until after Seller has executed the Assignment Agreement in accordance with paragraph d(3) below.
 - (d) After Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) makes the source selection decision, Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) may disclose to Seller the subcontract that Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) intends to award to the selected source including the applicable specifications and work statements, terms and conditions, and the subcontract price. Seller shall, within five (5) business days of being provided access to the subcontract, disclose to Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) any concerns that Seller has with the subcontract. Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) and Seller shall use reasonable efforts to resolve these concerns between them including raising any unresolved concerns to higher levels of management within Buyer and Seller. However, the final decision on any concerns that Seller has with the subcontract shall be made by Buyer (or a third party selected by Buyer to conduct the Competitive Procurement). Buyer (or a third party selected by Buyer to conduct the Competitive Procurement) shall make its final decision within ten (10) business days of Seller being provided access to the subcontract. Seller shall not disclose the subcontract to the part of Seller's organization that (i) submitted a proposal for the Competitive Procurement, (ii) entered into an agreement with a third party in which the third party agreed to subcontract work to Seller if the third party is awarded a contract under the Competitive Procurement, or (iii) prepared or assisted in preparing a third party's proposal for the Competitive Procurement.
- (3) Upon Buyer's award of the subcontract (or the award of the subcontract by a third party selected by Buyer to conduct the Competitive Procurement) to the selected source, Seller shall execute an Assignment Agreement as set forth below, modified only to include an appropriate reference to the awarded subcontract, and promptly provide the executed Assignment Agreement to Buyer (or the third party selected by Buyer to conduct the Competitive Procurement).



Assignment
Agreement.doc

e. Seller is not a Conflicted Subcontractor

If (1) Seller's NOI for a Competitive Procurement indicates that Seller is not a Conflicted Subcontractor, or (2) Seller fails to submit a NOI to Buyer for the Competitive Procurement on or before the date corresponding to seven (7) calendar days after the due date for the submission of comments from potential subcontractors on the draft RFP, or if Seller does not issue a draft RFP for the Competitive Procurement, on or before the date corresponding to ten (10) calendar days prior to the release of the final RFP, Seller shall be prohibited from (i) submitting a proposal for the Competitive Procurement, (ii) entering into an agreement with a third party in which the third party agrees to subcontract work to Seller if the third party

is awarded a contract under the Competitive Procurement, and (iii) preparing or assisting in preparing a third party's proposal for the Competitive Procurement.

f. Pre-NOI Activities

- (1) Seller shall include a notice in any RFI or draft RFP that it issues to potential subcontractors in a Competitive Procurement that Buyer (or a third party selected by Buyer) will conduct the Competitive Procurement if Seller's NOI, which must be submitted to Buyer no later than seven (7) calendar days after the due date for the submission of comments from potential subcontractors on the draft RFP, or if Seller does not issue a draft RFP for the Competitive Procurement, no later than ten (10) calendar days prior to the release of the final RFP, indicates that Seller is a Conflicted Subcontractor.
- (2) Seller shall develop a schedule of activities for each Competitive Procurement including, but not limited to, the following: (i) Seller's issuance of any RFI and draft RFP, (ii) Seller's submittal of a NOI to Buyer, and (iii) Seller's release of the final RFP. Seller shall provide to Buyer upon request Seller's schedule of activities for the Competitive Procurement including any updates to the schedule.
- (3) Seller shall develop specifications and work statements for each Competitive Procurement that are sufficient as to allow Seller to determine whether it intends to submit a proposal for the Competitive Procurement. Seller shall develop the specifications and work statements so as not to favor Seller's own products or capabilities.

g. Equitable Adjustment

For each Competitive Procurement that Buyer conducts in accordance with this clause H.23, Buyer and Seller shall negotiate an equitable adjustment to the contract price (reflecting the reduced work scope) in accordance with the Changes clause of this contract.

h. RESERVED

i. Restriction on Issuing RFPs and Awarding Subcontracts to Boeing and SAIC

Seller shall not issue an RFP or award a subcontract to The Boeing Company (hereinafter "Boeing") in any Competitive Procurement. "Boeing" as used in this paragraph (i) includes (1) all business organizations with which Boeing may merge, join or affiliate, now or on the future, and in any manner whatsoever, or which hold or may obtain, by purchase or otherwise, direct or indirect control of Boeing, and (2) Boeing's parent organization (if any) or Boeing's present or future subsidiaries, associates, or holding companies. The above restriction on issuing RFPs and awarding subcontracts to Boeing and the definition of "Boeing" apply with the same force and effect to Science Applications International Corporation.

j. Employee Training

Seller agrees to thoroughly educate its employees involved in each Competitive Procurement through appropriate mechanisms such as training and/or company policy information directives and procedures so that each such employee will understand the requirements of this clause H.23.

k. Employee Screening

Seller shall screen its employees involved in each Competitive Procurement for potential conflicts (which would result from an inappropriate direct or indirect financial interest in any offeror whose proposal is under evaluation) in accordance with its established conflict of interest procedures, and only individuals with no declared personal conflicts of interest will be assigned to source selection activities.

l. Proprietary Data

(1) Seller agrees to enter into written agreements with all its subcontractors to whose proprietary data it shall have access, and to protect any third party proprietary that it may receive in the course of performance of this contract to the effect that it will protect such data from unauthorized use or disclosure as long as the data remains proprietary.

(2) Seller agrees to protect the proprietary data and rights of other entities made available from any source, which were disclosed to it, directly or indirectly during the performance of this contract with the same caution that a reasonable, prudent contractor would use to safeguard their own proprietary data and rights. In addition, Seller agrees not to use or disclose the data for any other purpose than that for which it was furnished.

m. Merger or Acquisition Notice

In the event that Seller merges with or acquires an entity that is involved in any proposal activity under this contract begun prior to the effective date of any merger, legal affiliation or control agreement, the matter will be brought to the attention of Buyer for resolution.

n. Inspection

Buyer shall have full access for inspection of Seller's premises, policies, and records for the purpose of reviewing actions and programs undertaken by Seller to comply with this clause H.23.

o. Order of Precedence

In the event of a conflict or inconsistency between the provisions of this clause H.23 and Seller's source selection plan for a Competitive Procurement, the provisions of this clause H.23 shall prevail.

p. Flow Down

Seller agrees to incorporate the substance of this clause H.23, including this paragraph (p), appropriately modified to reflect the identity and relationship of the parties, in all subcontracts under this contract.

H.26 ORDERING FROM GOVERNMENT SUPPLY SOURCES

(a) Ordering From Federal Supply Schedule Contracts

(1) The Contracting Officer has authorized Buyer's FCS subcontractors to use Government Federal Supply Schedule Contracts in the performance of their FCS subcontracts.

(2) This authorization was issued in accordance with provisions of 48 CFR Subpart 51.1 "Contractor Use of Government Supply Sources" and can be used only to acquire goods and services required specifically for performance under the FCS prime contract.

(3) Upon request of the Seller Contracts Manager, Buyer will provide the Seller Contracts Manager a copy of the authorization letter within fifteen business days of request receipt.

(4) For each order placed to a Federal Supply Schedule vendor (i) a copy of the authorization letter must accompany the order, unless a copy was previously furnished to the vendor, and (ii) the following statement must appear on the order:

"This order is placed under written authorization from the U.S. Army Tank-Automotive and Armaments Command (TACOM) dated [Date of Letter]. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule Contract, the latter will govern."

- (5) The ordering authorizations provided in this clause may be unilaterally withdrawn, or suspended, by the Contracting Officer, in whole or in part, by providing written notice to the Buyer Contracts Director.
- (b) User Rates at Government Test Facilities. Seller is authorized to receive applicable Government user rates for all testing conducted at Government testing facilities.

CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS

The CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION AND MATERIALS article in the General Provisions is hereby deleted, and the following modified version of the article is substituted in lieu thereof:

CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND MATERIALS. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract or Buyer's prime contract (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials may include proprietary information of a third party, and any such third party shall be a third party beneficiary of this provision relative to its proprietary information. Buyer and Seller shall each use Proprietary Information and Materials received hereunder only in the performance of and for the purpose of this contract and, in the case of Buyer, also in the performance of Buyer's prime agreement (including subcontracts thereunder). However, despite any other obligations or restrictions imposed by this article, Buyer shall have the right to use, disclose and reproduce (and to authorize other subcontractors to use, disclose, and reproduce) Proprietary Information and Materials furnished by Seller, and make derivative works thereof, for the purpose of testing, certification, use, sale, integration, or support of any materials delivered under this contract or Buyer's prime contract. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure and use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Proprietary Information and Materials provided by Buyer. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this contract, Seller shall return to Buyer all Proprietary Information and Materials provided by Buyer and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials provided by Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article. Seller may disclose Proprietary Information and Materials provided by Buyer to its subcontractors as required in the performance of this contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Materials. Seller shall be liable to Buyer for any breach of such obligation by such subcontractor. The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this contract.