



Terms & Conditions:

MODIFICATIONS TO GENERAL TERMS AND CONDITIONS B-1B PRIME CONTRACT F33657-97-C-2004

MD-1870-28 (3 AUG 99) REV

GOVERNMENT CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form 70-C-33 (MD-1965-02) is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 30.

1. 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. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

52.203-6 Restrictions on Subcontractor Sales to the Government. This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)). 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.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. This clause applies only if this contract exceeds the simplified acquisition threshold. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

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

52.203-12 Limitation on Payments to Influence Certain Federal Transactions. This clause applies only if this Contract exceeds \$100,000.

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

52.211-5 New Material. Any notice will be given to Buyer rather than the Contracting Officer.

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

52.214-26 Audit and Records - Sealed Bidding. This Clause applies to this contract if it is expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data..

52.215-2 Audit and Records - Negotiation. This clause applies only if this contract exceeds the simplified acquisition threshold.

52.215-26 Integrity of Unit Prices (excluding subparagraph (b)). This clause applies except for contracts at or below the simplified acquisition threshold (as defined in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

52.215-27 Termination of Defined Benefit Pension Plans. This Clause applies to this contract if it meets the requirements of FAR 15.408(g)).

52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

52.215-40 Notification of Ownership Changes. This Clause applies to this contract if it meets the requirements of FAR 15.408(k).

52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications. The term "Contracting Officer" shall mean Buyer's Purchasing Representative.

52.219-8 Utilization of Small, Small Disadvantaged and Woman-Owned Small Business Concerns.

52.222-1 Notice to Government of Labor Disputes. "Contracting Officer" means Buyer.

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

52.222-20 Walsh-Healy Public Contracts Act. This clause applies only if this contract exceeds \$10,000.

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

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans. This clause applies only if this contract exceeds \$10,000.

52.222-36 Affirmative Action for Handicapped Workers. This clause applies only if this contract exceeds \$2,500.

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Viet Nam Era. This clause applies only if this contract exceeds \$10,000.

52.223-2 Clean Air and Water. This clause applies only if this contract exceeds \$100,000.

52.225-10 Duty-Free Entry. This clause applies only if this contract identifies supplies to be afforded duty-free entry or if foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

52.225-11 Restrictions on Certain Foreign Purchases.

52.227-1 Authorization and Consent.

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. A copy of each notice sent to the Government will be sent to Buyer. This clause applies only if this contract exceeds the simplified acquisition threshold.

52.234-1 Industrial Resources Developed Under Defense Production Act Title III.

52.242-15 Stop Work Order. The terms "Contracting Officer" and "Government" mean Buyer.

52.244-6 Subcontracts for Commercial Items and Commercial Components.

52.245-2 Government Property (DEC 1989 Version).

52.245-17 Special Tooling.

52.245-18 Special Test Equipment.

52.246-23 Limitation of Liability.

52.247-63 Preference for U.S.-Flag Air Carriers.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels. This clause applies only if this contract exceeds \$25,000.

52.248-1 Value Engineering (excluding subparagraph (f)). The term "Contracting Officer" means Buyer. This clause applies only if this contract is for \$100,000 or more. If Value Engineering Change Proposal is accepted by the Government, Seller's share will be 50% of the instant, concurrent and future contract net acquisition savings and collateral savings that Buyer receives from the Government. Seller's negotiated share of the net acquisition savings and collateral savings shall not reduce the Government's share of concurrent or future savings or collateral savings. Buyer's payments to Seller under this clause are conditioned upon Buyer's receipt of authorization for such payments from the Government.

2. DoD Contracts. If this Contract is placed under a Department of Defense Contract, the following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

252.204-7000 Disclosure of Information. Seller will submit requests for authorization to release through Buyer.

252.209-7000 Acquisition From Subcontractors Subject to On-site Inspection Under the Intermediate-Range Nuclear Forces Treaty. This clause applies only if this contract exceeds the FAR Part 13 simplified acquisition threshold and does not apply to the purchase of commercial items or commercial components.

252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials. This clause applies to this contract if it requires, may require, or permits Seller to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.

252.225-7001 Buy American Act and Balance of Payment Program.

252.225-7009 Duty-free Entry — Qualifying Country End Products and Supplies.

252.225-7014 and Alt. 1 Preference for Domestic Specialty Metals.

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings. This clause does not apply to the purchase of commercial items other than ball or roller bearings or to items which contain no ball or roller bearings.

252.225-7025 Foreign Source Restrictions.

252.225-7026 Reporting of Contract Performance Outside the United States. This clause applies only if this contract exceeds \$500,000.

252.227-7013 Rights in Technical Data - Noncommercial Items (NOV 1995 Version). This clause applies only if the delivery of data is required or if computer software may be originated, developed or delivered under this contract.

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995 Version).

252.227-7016 Rights in Bid and Proposal Information (JUN 1995 Version).

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

252.227-7030 Technical Data — Withholding of Payment (OCT 1988 Version). "Government" and "Contracting Officer" mean Buyer. This clause applies only if the delivery of data is required by this contract.

252.227-7036 Certification of Technical Data Conformity (MAY 1987 Version). This clause applies only if the delivery of data is required by this contract.

252.227-7037 Validation of Restrictive Markings on Technical Data (NOV 1995 Version). This clause applies only if the delivery of data is required by this contract.

252.245-7001 Reports of Government Property.

252.247-7023 Transportation of Supplies by Sea. This clause applies only if this contract exceeds the Simplified Acquisition Threshold in FAR Part 13.

252.247-7024 Notification of Transportation of Supplies by Sea. "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause does not apply to the procurement of commercial items or commercial components.

252.249-7002 Notification of Proposed Program Termination or Reduction. This clause applies only if this contract is for \$500,000 or more.

3. If goods or services being procured under this contract are for commercial items and Clause 1086 is set forth in the purchase order, the foregoing Government clauses are deleted and the following FAR and DFARS clauses are inserted in lieu thereof:

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

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans. This clause applies only if this contract exceeds \$10,000.

52.222-36 Affirmative Action for Handicapped Workers. This clause applies only if this contract exceeds \$2,500.

4. The following prime contract special provisions apply to this purchase order:

A. OZONE DEPLETING SUBSTANCES.

The Seller shall notify Buyer's purchasing representative if any Class 1 Ozone Depleting Substances (ODS) are used or anticipated to be used in the design, manufacture, test, operation, or maintenance of any system, subsystem, item, component or process set forth in this contract.

B. PROGRESS PAYMENTS

If Clause 2404 or 2405 is included in this contract, DFARS 252.232-7004, DoD Progress Payments Rate, November 1993 version, is incorporated herein by this reference. In such Clauses, the term "Contractor" shall mean Seller.

C. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to MDC 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 any DoD Agency, during the performance of this Contract.

D. CLASS S PARTS (FIXED PRICE)

(a) Definition. JAN Class S parts as used in this clause means space-quality military standard electronic parts as described in MIL-S- 19500 for semiconductors, MIL-M-38510 for microcircuits, and associated specifications for passive electronic parts.

(b) The Seller is authorized and encouraged to acquire JAN Class S parts in FSC 5961 and 5962 as defined on the encoded list* from the Defense Supply Center Columbus (DSCC) using Military Standard Requisitioning and Issue Procedures (MILSTRIP). If the parts are not available from DSCC to meet contractual time requirements or if the Seller intends to acquire the parts from sources other than DSCC, the Seller shall advise the Parts Control Board of the alternate source. *JAN Class S NSN List. This list will change from time to time. For most recent version, contact SMC/SDFP, 160 Skynet Street, Suite 2315, El Segundo, CA 90245-4683, (310) 363-2406 or DSN 833-2406.

(c) To use MILSTRIP, the Seller shall obtain a letter of authorization from the acquisition activity which includes the list of parts (including national stock numbers and order quantities) authorized to be ordered through MILSTRIP.

(d) JAN Class S parts obtained from DSCC under this clause shall be considered contractor-furnished

property (CFM) since the items are acquired directly by the Seller. The Seller shall retain responsibility for assuring timely delivery of parts to support this contract.

(e) DSCC shall be responsible for reimbursing or replacing any defective part from the operating-stock, provided the defect was not caused by the Seller. Defective DSCC parts shall be reported to DSCC-TE, Dayton, OH 45444, (513) 296-8477.

(f) The Seller shall be responsible for rework, repair, retest, and schedule impacts of defective assemblies or systems caused by parts failures, including those caused by JAN Class S parts acquired from DSCC, in the same manner as if the defective material has been acquired from sources other than DSCC. The Government's and Buyer's liability for parts failure shall not exceed the cost of the JAN Class S part and this limitation of liability shall apply in lieu of any other liability provision of this contract.

(g) The Seller shall follow AFM 67-1, Volume 1, MILSTRIP Requisitioning Procedures, as specified by the acquisition activity.

(h) The Seller agrees to include a clause substantially the same as this clause, including this paragraph (h), in every subcontract or purchase order issued in performance of this contract, unless it is known that the item purchased does not contain any electronic parts identified in paragraph (b) above.

(j) The Seller agrees that JAN Class S parts acquired under this clause shall only be used in the performance of this Government contract.

E. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on a Government installation, Seller shall (a) conform to the specific safety requirements contained in the Contract, and (b) for those related activities not directly addressed by this Contract, conform to the applicable safety rules prescribed by the Government installation, and (c) take such additional precautions as Buyer or the Contracting Officer under Buyer's Government contract may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected as directed by Buyer or the Contracting Officer, shall be grounds for termination of this Contract in accordance with the default provisions hereof. Buyer may, by written order, direct additional safety and accident standards as may be required under Buyer's Government contract and any adjustments resulting from such direction will be in accordance with the provisions of this Contract entitled "Changes."

F. ORGANZATIONAL CONFLICTS OF INTEREST

(a) To prevent conflicting roles which may bias the Seller's judgment or objectivity, or to preclude the Seller from obtaining an unfair competitive advantage in concurrent or future acquisitions, the Seller will be retracted as set forth in subparagraph (c).

(b) The following descriptions or definitions apply:

- (1) "Systems Engineering" means preparing specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design.
- (2) "Technical Direction" means developing work statements, determining parameters, directing other Seller's operations, or resolving technical controversies.
- (3) "Development" means all efforts towards solution of broadly-defined problems. This may encompass research, evaluating technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.
- (4) "Proprietary Information" means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive information, and computer software, and may appear in cost and pricing data or involve classified information.
- (5) "System" means the system that is the subject of this contract.
- (6) "System Life" means all phases of the system's development, production or support.
- (7) "Seller" means the business entity receiving the award of this contract, its parents, affiliates, divisions and subsidiaries.

(c) The following shall apply:

(1) The Seller may gain access to proprietary information of other companies during contract performance. The Seller agrees to enter into company-to-company agreements to (i) protect the other company's information from unauthorized use or disclosure for as long as it is considered proprietary by the other company and (ii) refrain from using the information for any purpose other than that for which it was furnished. For information purposes, the Seller shall furnish copies of these agreements to the Buyer. Those agreements are not intended to protect information which is available to the Government or the Buyer from other sources and furnished voluntarily without restriction.

(2) The Seller agrees to accept and to complete all task orders, and not to contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of

http://www.boeing.com/companyoffices/doingbiz/bluebook/chapter_III/md_1870_28.html

interest.

(d) The above restrictions shall be included in all subcontracts, teaming agreements, and other agreements calling for performance of work related to this contract, unless excused in writing by the Contracting Officer.