



# Terms & Conditions:

## MODIFICATIONS TO GENERAL TERMS AND CONDITIONS C-17 PRIME CONTRACT F33657-01-C-2002

MD-1870-38 (24 APR 01) REV

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### GOVERNMENT CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form MD-1965 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 36. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If Form MDA-TA 26-858 is applicable to this procurement, the Government clauses set forth in Article 36 are hereby deleted and the following FAR/DFARS clauses are inserted in lieu thereof.

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.

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

by Seller or its subcontractors at any tier.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. 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.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions. This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "(c)(4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

52.211-5 New Material. Any notice will be given to Buyer rather than the Contracting Officer. The Seller is authorized the use of used or reconditioned material, residual inventory, or former Government Surplus property in performance of this contract.

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

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

52.215-26 Integrity of Unit Prices (excluding subparagraph (b)) (Jan 1997 Version). 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 (Mar 1996 Version). 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) (Mar 1996 Version). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

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

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

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

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 (Apr 1984 Version). 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. For the purposes of this clause, the blanks in paragraph (f)(3) are completed as follows: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE, Duty-free entry is claimed pursuant Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at port of entry, the importer or authorized agent will notify Commander, Defense Contract Management Area Operations (DCMAO, New York, 201 Varick Street, New York, New York, 10014-4811, Attention DCRN-NCT) for execution of Customs Forms 7501, 7501-A, or 7506 and required duty free entry certificates.

52.225-11 Restrictions on Certain Foreign Purchases (Oct 1996 Version).

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. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds the simplified acquisition threshold.

52.228-5 Insurance - Work on a Government Installation. Seller shall provide and maintain insurance as set forth in FAR 28.307-2.

52.229-8 Taxes - Foreign Cost-Reimbursement Contracts.

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

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

52-244-6 Subcontracts for Commercial Items and Commercial Components.

52.245-2 Government Property. "Government" shall mean Government throughout except the first time it appears in paragraph (f) when "Government" shall mean the Government or the Buyer.

52.245-17 Special Tooling (APR 1984 Version). This clause only applies to those contract line items that begin with Cost Charge Number (CCN) DKxxxxxx ("x" may be any alphanumeric character), as specified in each line item of the contract.

52.245-18 Special Test Equipment. Change "30 days" to "45 days" in paragraph (b) and (c).

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels. This clause applies only if this contract exceeds the small purchase limitation.

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.

252.203-7001 Special Prohibition on Employment (excluding paragraph (g)). 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. "Contractor" and "contract" are not changed in paragraphs (a) and (b). In paragraph (e), "Government" shall mean Government or Buyer. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer". Paragraph (g) is deleted and "Contracting Officer" shall mean Contracting Officer.

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.

252.211-7000 Acquisition Streamlining. This clause applies only if this contract exceeds \$1 million.

252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials, Alternate I. 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 Supplies (End Products and Components).

252.225-7010 Duty-free Entry - Additional Provisions. This clause applies in addition to FAR 52.225-10. Additional information referenced in this clause is available on request.

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 Restriction on Acquisition of Forgings.

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. This clause applies only if the delivery of data is required for noncommercial items under this contract.

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

252.227-7015 Technical Data - Commercial Items. This clause applies only if the delivery of data is required for commercial items under this contract.

252.227-7016 Rights in Bid or Proposal Information.

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

252.227-7030 Technical Data - Withholding of Payment. "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. This clause applies only if the delivery of data is required by this contract.

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

252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

252.234-7001 Earned Value Management System. This clause is applicable only if this contract states that

the Earned Value Management System criteria applies to Seller.

252.245-7001 Reports of Government Property. Seller will provide information that the Buyer may require to complete Buyer's annual report.

252.246-7001 Warranty of Data. The warranty period in paragraph (b) is three years from the Government's acceptance of the final items of data under this contract. "Government" and "Contracting Officer" shall mean Buyer.

252.247-7023 Transportation of Supplies by Sea. This clause applies only if this contract exceeds the Simplified Acquisition Threshold in FAR Part 13. In paragraph (c), "45 days" is changed to "60 days".

252.247-7024 Notification of Transportation of Supplies by Sea. "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" shall 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. In paragraph (c), "two weeks" is changed to "10 days".

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

3. 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.

252.227-7015 Technical Data - Commercial Items NOV 1995 Version).

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

A. SAFETY AND ACCIDENT PREVENTION

- (a) In performing work under this Contract on a Government installation, Seller shall
- (1) Conform to the specific safety requirements established by this Contract;
  - (2) Comply with the safety rules of the Government installation that concern related activities not directly addressed in this contract;
  - (3) Take all reasonable steps and precautions to prevent accidents and preserve the health and safety of Seller, Buyer and Government personnel performing or in any way coming in contact with the performance of this contract; and
  - (4) Take such additional immediate precautions as Buyer or the Contracting Officer under Buyer's Government contract may reasonably require for health and safety purposes.
- (b) Buyer may, by written notice to the Seller, direct Air Force Occupational Safety and Health Standards (AFOSH) and/or health/safety standards as may be required in the performance of this contract and any adjustments resulting from such direction will be in accordance with the article set forth in the General Terms and Conditions entitled "Changes"
- (c) Any violation of these safety 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.
- (d) If Form MD-1965 or MDA-TA 26-858 is applicable to this contract, Article 30 of said Form is deleted in its entirety and this Article A. is substituted in lieu thereof

#### B. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any DoD Agency, during the performance of this Contract.

#### C. MATERIAL INSPECTION AND RECEIVING REPORT

Applicable only to final inspection and acceptance for over and above repair of reparable:

- (a) As specified by DFARS, Appendix F, Table 2, a copy of DD Forms 250 shall be forwarded to the following address:
- (1) Forward the Government purchasing office copy to ASC/YCKC, Bldg 558, Loop Road West, Wright - Patterson AFB, OH 45433-7142.
  - (2) For shipments involving foreign Military Assistance Program (MAP), Grant Aid (GA), or Foreign Military Sales (FMS) requirements, an additional copy shall be sent to: N/A.
  - (3) Additional distribution of DD Forms 250 is to be made to the following addresses: WR-ALC/LHK, 205 Perry St., Suite 107, Bldg. 228, Robins AFB, GA 31098-1607.

(b) If delivery of MAP, GA, or FMS items to foreign destinations is required, the copies of DD Forms 250 required by DFARS, Appendix F, Table 2, Material Inspection and Receiving Report, Special Distribution, shall be forwarded to the "ship to" address designated in the contract.

#### D. SELLER IDENTIFICATION

(a) Seller personnel and their subcontractors must identify themselves as such during meetings, telephone conversations, in electronic messages, or correspondence related to this contract.

(b) Seller-occupied facilities (on AFMC or other Government installations) such as offices, separate rooms, or cubicles must be clearly identified with Seller supplier signs, name plates or other identification, showing that these are work areas for Seller or subcontractor personnel.

#### E. PACKAGING AND MARKING OF HAZARDOUS MATERIAL

If hazardous materials will be shipped under this contract, such materials shall be prepared for shipment in accordance with the following applicable regulations for the individual shipment hazard, ultimate destination, and mode of transportation:

- (1) Code of Federal Regulations (CFR) Title 29, Part 1910-1200;
- (2) Code of Federal Regulations (CFR) Title 49
- (3) Air Force Joint Manual (AFJAM) 24-204, Preparing Hazardous Materials for Military Air Shipment;
- (4) International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air; and
- (5) International Maritime Dangerous Goods (IMDG) Code.

#### F. FUTURE GOVERNMENT ORGANIC OR COMPETITIVELY PROCURED SUSTAINMENT

(a) The Government's sustainment strategy for the C-17 fleet may change depending on future circumstances. In the event the Government decides to use organic sustainment or competitively procured sustainment for any C-17 item for which Buyer or Seller is the assigned Inventory Control Point (ICP), the parties shall negotiate an equitable adjustment to this contract for the formal delivery of a support package (SP).

(b) The SP shall contain all data required to either return the item to Government organic support/repair or to facilitate competitive re-procurement of Seller-provided support/repair (Procuring Contracting Officer (PCO) will specify whether SP is to facilitate organic or re-procurement scenario). The SP shall also identify all associated Government-owned items which are being utilized for support/repair of the item. The SP will not include the Seller's proprietary Sustainment Data System.

(c) It is anticipated that any equitable adjustment made in accordance with this clause will include only those costs (with overhead, FCCOM, and fee as appropriate) associated with reproduction, data gathering, and delivery unless one or more of the following conditions apply:

- (1) The data is to be delivered in other than Seller's (or its subcontractor's) format and media.
- (2) The data has not been previously developed/generated for use in this contract.
- (3) The data has not been previously delivered under this or another Government contract.
- (4) The Government requires additional rights to the data beyond the rights it is already entitled to in



association with the "Data Rights" clause of this contract.

If the Government requests Seller proprietary data be included in a SP, the Seller will make its best efforts to negotiate with its components and subcontractors for the release of same; however, the Seller is under no obligation to provide such proprietary data if its component(s) or subcontractor(s) refuses (subject to the "Data Rights" clauses of this contract).

(d) DFARS Clause 252.246-7001, Warranty of Data, shall not apply to any SP containing data developed/generated under prime contract F33657-01-C-2002, or prime contract F33657-97-C-0008, that has not been previously delivered under a CDRL requirement.

(e) In the event one or more additional non-U.S. Government C-17 customers are identified for a Seller-managed C-17 unique item, the item will no longer be considered C-17 unique and management responsibility will be transferred from the Seller to the Buyer/Government unless otherwise directed by the Buyer. While the management responsibility transfer is in process, the Seller shall support all requirements from the added user(s) until the cognizant Government agency is in a support position. An equitable adjustment to the negotiated cost, award fee and cost/price of this contract will be negotiated for the impact of this transfer of responsibility.

#### G. WARRANTY

Delete the Article set forth in the General Terms and Conditions/General Provisions entitled "Warranty", and insert in lieu thereof the following:

"All Seller warranties, if any, shall inure to and be passed on to the Government. The Seller shall perform all work hereunder in workmanlike manner. The Seller shall, when requested by the Government, determine if a returned part is under warranty. In the event that a failed part is under warranty, the Seller shall notify Buyer and the Government of such fact."

#### H. OZONE DEPLETING SUBSTANCES

The Seller shall notify the Buyer 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.

#### I. FOREIGN OBJECT DAMAGE/CONTROL

Seller shall establish and maintain systems and procedures necessary to provide a program of foreign object damage/control.