

Boeing Information, Space & Defense Systems

Date: July 1998

EXHIBIT B

**GOVERNMENT SPECIAL PROVISIONS
APPLICABLE TO
PRIME CONTRACT F33657-97-C-0031
[include as applicable to your subcontract]**

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H-001	LOW RATE INITIAL PRODUCTION (LRIP) CONTRACT CONFIGURATION MANAGEMENT AND CONFIGURATION CHANGES CLAUSE

1. The Seller shall continue to maintain configuration control and management procedures for the deliverable items throughout the performance of the contract. The configuration of deliverable items will be documented in the Technical Data Package, developed under the Engineering and Manufacturing Development (EMD) Program and updated as part of LRIP.
2. The LRIP contract performance baseline is established by the item Performance Specification Number TBD. (Seller to include any unique specification for its deliverables.)
3. At the time of this Lot 1 contract award, the item configuration is defined in the applicable Performance Specification. However, the parties recognize that EMD testing may identify design changes subsequent to the date of execution of this contract necessary to make the item compliant with the aforementioned specification requirements. Should design changes of this nature be necessary, the non-recurring design effort necessary to meet the aforementioned specification requirements and recurring implementation efforts into EMD items will be performed under the EMD contract. The recurring and production unique non-recurring costs for implementation efforts applicable to LRIP item will be performed through priced Supplier Change Proposals (SCPs) under this contract, if authorized.
4. Approved no-cost class I changes (both to the EMD Contract and the LRIP Contract) to the EMD functional baseline which impact the LRIP performance baseline, originating from the EMD Contract and which impact deliverables under the LRIP Contract, shall be incorporated into the LRIP contract baseline via SCPs. All class I changes (regardless of the reason for the change), originating from the EMD Contract, which would impact price and/or schedule of the products delivered under the LRIP Contract will be handled as a separately priced LRIP SCP. In the event that the Buyer elects not to incorporate changes resulting from EMD testing in items to be delivered under this contract, appropriate authorization (e.g., deviation, waiver, or proposed specification change approval) will be granted with no further consideration due to either party.
5. When appropriate, LRIP SCPs (submitted in accordance with the Supplier Data Requirements List (SDRL)) shall be supported by technical data such as preliminary drawings, sketches, and/or illustrations, and other data (e.g., logistics, safety, analyses, and supporting pricing information), to justify and describe the changes and to determine the total impact. For Class I changes, the Seller shall submit for Buyer approval a firm fixed price SCP or, when directed, a not-to-exceed price SCP. A Class I change shall be defined as one which alters the requirements of the performance specifications, makes retrofit mandatory either because such changes are Safety-of-Flight critical or mission essential, or affects external interfaces with the Pilot, Maintainer, or Trainer.
6. The Seller shall propose changes to the scope of work of the contract that do not affect the performance specification, via Supplier Change Proposals (SCPs). The Seller shall propose a firm fixed price for a SCP or, when requested, a not-to-exceed price for a SCP.
7. Furthermore, notwithstanding anything provided in this contract to the contrary, the Seller shall only be responsible to attain the same level of performance or compliance with respect to any requirement of this contract, as that level of performance or compliance attained upon completion of the test program for the F-22 under the EMD contract. The Seller and the Buyer agree that this contract shall be modified as necessary through change proposals to incorporate any lesser or greater performance results attained under the F-22 EMD effort by virtue of incorporation of approved performance based specification changes.
8. The Seller shall document deviations and waivers to the contract performance baseline in accordance with the SDRL.

1. The extent that any contract process requirements flowed down to Seller's subcontractors are inconsistent with Single Process Initiatives (SPI) processes already authorized by the Government for use at the subcontractors' facilities, Seller is authorized to supersede those contract process requirements when substituting an approved SPI process at a subcontractor's facility(ies) for work to be performed for Seller. Except as provided in any Seller-adopted, Government-approved SPI process, all other terms and conditions of the contract remain unchanged and in full force and effect.
2. The extent that any contract process requirements flowed down to Seller's sister companies ("sister company" is defined as another division, company or operating entity within the same corporation) are inconsistent with Single Process Initiatives (SPI) processes already authorized by the Government for use at the sister company's facility, Seller is authorized to supersede those contract process requirements when substituting an approved SPI process at a sister company's facility(ies) for work to be performed for Seller. Except as provided in any Seller-adopted, Government-approved SPI process, all other terms and conditions of the contract remain unchanged and in full force and effect.

H-003 FOREIGN NATIONALS – FOREIGN SOURCES

- (a) For purposes of this clause,
 - (1) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;
 - (2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation or person; and
 - (3) Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.
- (b) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export controlled data and information.
- (c) Seller acknowledges that equipment and technical data generated or delivered in performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered in performance of this contract (see 22 CFR Section 125). Seller agrees to notify and obtain the written approval of the Buyer prior to assigning or granting access to any work, equipment or technical data generated or delivered in performance of this contract to foreign nationals or their representatives. Commercial items, off-the-shelf items (i.e., previously developed items) and items not on the critical technology list are excluded from this requirement. This notification shall include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DOD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)). (AFMC FAR Sup 5352.293-9002, Dec. 1995).
- (d) Notwithstanding anything in this contract to the contrary, the notifications and approvals previously provided during the F-22 EMD contract shall be applicable to this contract and/or any other F-22 contract effort.

H-004 USE OF GOVERNMENT-OWNED SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT

- (a) In the performance of requirements under this contract, Seller may, upon Buyer approval, use on a no charge basis, the Government-owned special tooling such as jigs, dies, fixtures, special gauges, other manufacturing aids, and special test equipment heretofore acquired or manufactured or authorized for acquisition or manufacture by Seller and/or its subcontractors as Government-furnished property and presently in its or their possession which shall have been determined by the Buyer to be available for the performance of the work called for by this contract in accordance with FAR clause 52.245-2 entitled "Government Property (Fixed Price)." It is, however, hereby provided that use of the foregoing shall not interfere with the performance of work under the contract(s) for which they were originally produced, acquired, or furnished.
- (b) Subject to the provisions of the paragraph above, any of the aforementioned items of special tooling and/or special test equipment presently in the possession of Seller and/or subcontractors may be modified as necessary for the performance of this contract with Buyer notification and approval. However, upon completion of this effort, Seller agrees to return all Special Tooling and Special Test Equipment (ST&STE) used to its original condition if so required by Buyer.
- (c) Pursuant to paragraphs (a) and (b) Seller, in the performance of the F-22 Program, may without prior approval use and may authorize its subcontractors to use any and all Government-owned F-22 Special Tooling, Special Test Equipment or other F-22 Government property manufactured on, transferred to or for which a right to use has been granted for any other F-22 contract.

H-004A REVIEW OF SPECIAL TEST EQUIPMENT LISTS

- (a) It is recognized that the price of certain contract items may include a factor for special test equipment. Prior to the acquisition of any special test equipment, Seller shall submit an itemized list of such special test equipment to the Buyer for approval. In the event any of the items listed are determined not to be special test equipment as defined in FAR 45.101, the parties shall negotiate an equitable adjustment in the contract price and revise any other contractual provisions affected by such determination, in accordance with the procedures set forth in the "Changes-Fixed-Price" clause of the FAR.
- (b) If, during the performance of this contract, it is necessary to acquire additional special test equipment in the implementation of any change authorized pursuant to said "Changes" clause, the equitable adjustment contemplated by said "Changes" clause shall not include the cost of any test equipment which does not meet the definition set forth in FAR 45.101, except to the extent specified in FAR 31.205-40. Therefore, Seller shall submit to Buyer an itemized list of all special test equipment required for such change, no later than concurrently with the submission of its claim for an equitable adjustment. This list shall include: (1) manufacturer's name, (2) general breakout of major components, (3) estimated delivery cost, and (4) any special characteristics deemed pertinent to the classification of the item, including those reasons that support Seller's contention that the items are in fact "special" and that the use of such equipment is limited to the development, production and/or testing of the particular supplies or parts thereof or in the performance of the particular services.
- (c) Seller may elect to utilize the provisions of paragraph (a) in lieu of paragraph (b) in whole or in part for changes. Notification of such election shall be included in Seller's submission of the proposal for equitable adjustment. If the provisions of paragraph (a) are utilized, the information called for in paragraph (b) shall be submitted to Buyer thirty (30) days after change authorization or at such later date as may be agreed to by the parties.

H-004B GOVERNMENT-FURNISHED PROPERTY

The following items of GFP shall be furnished to Seller for use in the performance of this contract in accordance with the requirements of the "Government Property-Fixed Price" Alternate I (APR 1984)" clause, incorporated herein by reference:

(The list of GFP, if any, shall be proposed by the offeror as part of its proposal and will be negotiated or otherwise agreed to prior to contract award.)

H-004C FURNISHING OF MATERIALS OR SUPPLIES BY THE BUYER AT ITS OPTION

Buyer may at its option from time to time offer to furnish Seller with materials or supplies, which are required by Seller for the performance of this contract. If such offer is accepted by Seller, an equitable adjustment in the contract price will be negotiated prior to the delivery of such materials or supplies to Seller, or as soon thereafter as possible. Seller shall be responsible for integration of materials and supplies furnished pursuant hereto.

H-004D LIABILITY FOR GOVERNMENT-OWNED PROPERTY NOT FURNISHED TO THE SELLER

It is recognized that personnel of Seller may find it necessary to temporarily use, occupy or otherwise encounter Government-Owned Property in the performance of work at the site or sites called for under this contract, which property is not furnished to Seller as Government-furnished Property. Except for risks for which Seller may be entitled to reimbursement or compensation under any insurance required by and/or included as a direct charge to this contract, Seller's liability for such Government-Owned Property used, occupied or otherwise encountered at the site of work shall be the same as set forth for Alternate I of FAR 52.245-2, Government Property Clause of this contract.

H-004E GFE/GFAE/GFP SELLER SUPPORT

The Buyer shall provide all support, spares, and repair support for all GFE/GFAE/GFP equipment during testing (lab, anechoic chamber, ground and flight) to be accomplished under this contract.

H-004F REPAIR, MODIFICATION/GFP

The Seller will obtain Buyer approval prior to the repair of GFP accountable under this contract. Any repair, modification, or overhaul shall be separately negotiated, authorized and funded from this contract. The Seller shall segregate these costs from all other costs of this contract.

H-005 ADDITIONAL PROVISIONS PERTAINING TO GROUND AND FLIGHT RISK

- (a) For the purpose of paragraphs (b)(iii) and (d)(ii) of the contract general provision entitled "Ground and Flight Risk," the approving authority is the Buyer. For the purpose of paragraphs (b)(iv), (c)(1), (c)(3), (c)(5), (h) and (j) of said clause, the insertion for the blank is the Buyer.
- (b) For the purpose of the "Ground and Flight Risk" clause of the contract general provisions, "Contracting Premises" shall mean the entire Government-owned areas in Cobb County, Georgia, on which is located Air Force Plant No. 6 and Dobbins Air Reserve Base at Marietta, Georgia, including Contractor-owned area adjacent thereto; provided however, that this definition does not intend to broaden or grant to the Contractor any rights to the use of any portion of the Government reservation not otherwise granted under various facilities contracts and/or other agreements with the Government.
- (c) The term "in the open" in the "Ground and Flight Risk" clause means at any location on the Contractor's premises, except the main factory building (Air Force Plant No. 6, Building B-1), and any time the aircraft is fueled, irrespective of its location.

H-006 LIMITATION OF LIABILITY – IDENTIFICATION OF HIGH VALUE ITEMS

The major items as contemplated by the clause entitled "Limitation of Liability – High Value Items" (FAR 52.246-24) are identified as F-22 deliverables (nomenclature) as appearing in line items of this contract and any modifications to this contract.

H-007 SELLER SINGLE PROCESS INITIATIVES

- (a) Seller and Government have agreed upon a variety of Single Process Initiative (SPI) block changes which have been incorporated into Seller's prime contracts. As of the date of this contract, the following block changes have been approved:

Block Change Number Title

(To be filled in by the supplier as part of its proposal)

- 1.
- 2.

- (b) The above referenced block changes are incorporated by reference into this contract. In the event of a conflict between the processes and procedures established above and the process or procedure otherwise provided in this contract, the above referenced block changes shall control. The only exception to the foregoing shall be with respect to provisions of this contract, if any, which are expressly identified as an exception to this provision.

- (c) Future SPI block changes will be incorporated into this and other contracts as the parties agree from time to time.

H-008 CERTIFICATION OF TECHNICAL DATA

Concurrent with delivery of the final data item under this contract, Seller shall execute and provide the certification required in DFARS 252.227-7036, Certification of Technical Data Conformity (MAY 1987).

H-009 DEFERRED DELIVERY OF TECHNICAL DATA

(a) Under the prime contract the Government may choose not to order the delivery of full supplier Technical Data Packages (TDPs) under the EMD contract. The Government may choose to order the TDPs under the 0030 prime contract in accordance with DFARS 252.227-7026 "Deferred Delivery of Technical Data or Computer Software."

(b) Seller agrees to maintain the currency of its drawings and associated lists, provide access to the F-22 Team/Government personnel upon request, and deliver a complete Technical Data Package should the Government order delivery of TDPs under this contract.

H-010 PERFORMANCE BASED PAYMENTS

(Seller may delete or propose)

{Not applicable to IDWA or PSAs}

In accordance with FAR 52.232-32, incorporated herein by reference, Seller shall be paid on the basis of successful performance of specified events under the following conditions:

- (a) The performance based payment event, the successful completion criteria and the amount of each payment is described on pages _____ of this contract.
- (b) Payment for the contract price under CLINs XXXX thru XXXX shall be made to Seller in accordance with the payment schedule shown on pages _____ of this contract.

(NOTE: Sellers who want to use this provision must propose deliverables with schedules or substantive events with acceptance criteria to be used as payment points. Seller's cost proposal must include prices for each payment point. Examples of payment points are successful completion of the acceptance test or delivery of a hardware unit. Please note that Progress Payments are not included in this contract.)

- (c) Buyer is authorized to approve payment upon presentation of Seller certification of completion or when final delivery, as identified in the schedule contained herein, of an end item is the billing event.
- (d) Within FAR 52.232-32, the term "Contractor" shall mean Seller and the terms "Contracting Officer" and "Government" shall mean Buyer.