



## Section 4 : GENERAL TERMS AND CONDITIONS (DAR/NASA PR)

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496. S&DS Modifications to Buyer 495, Cost Reimbursement Purchase Order/Subcontract Conditions (REV 28 APR 80) (10/1/96).

(a) The following additions, deletions, and substitutions are hereby made to Article 3.A:

(1) Delete clause 1, Assignment of Claims 7-103.8.

(2) Substitute the following as clause 10:

10. Buy American Act and Balance of Payment Program 7-104.3.

(3) Delete clause 15, Excess Profits 7-104.11(a).

(4) Delete clause 31, Geographic Distribution of Defense Subcontracts Dollars 7-104.48.

(5) Add the following clauses:

35. Deferred Delivery of Technical Data or Computer Software 7-104.9(d). This clause applies only if the delivery of data is required.

36. Deferred Ordering of Technical Data or Computer Software 7-104.9(m). This clause applies only if the delivery of data is required.

37. Utilization of Women-Owned Business Concerns 7-104.52. This clause applies only if this contract is expected to exceed \$25,000.

38. Recovery of Nonrecurring Costs on Commercial Sales 7-104.64. This clause applies only if this contract exceeds \$1,000,000.

39. Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles 7-104.81.

(b) The following additions, deletions, and substitutions are made applicable to Article 3.B:

(1) Substitute the following for clause 11:

11. Buy American Act and Agreement Act 6.104-5.

(2) Delete clause 12, Assignment of Claims 7.103-8.

(3) Substitute the following for clause 23:

23. New Technology 9.107-5 [excluding paragraph (h)]. This clause applies only if this contract involves research, experimental, design, engineering, or development work.

(4) Substitute the following for clause 29:

29. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era 12.1102-2.

(5) Substitute the following for clause 30:

30. Affirmative Action for Handicapped Workers 12.1302-1.

(6) Add the following clauses:

32. Preference for United States Flag Vessels 1.402-3(b).

33. Utilization of Women-Owned Business Concerns 1.708(b). This clause applies only if this contract is expected to exceed \$10,000.

(c) When it is indicated in the schedule of the subcontract that the effort hereunder is to be incrementally funded, then subparagraph 4.1 shall be modified to read: Limitation of Funds, DAR 7.203-3(b), or Limitation of Government's Obligation, NASA 7.204-53, as appropriate, is incorporated herein by reference and made a part of this contract.

(d) Delete the parenthetical provision at the beginning of Article 16, PATENT INDEMNITY.

(e) Add the following new Articles to Buyer 495:

## 25. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS

Seller will not make, deny, or confirm any news release, advertisement, or public announcement concerning the subject matter of this contract or any phase of the program hereunder without Buyer's prior written approval.

## 26. PACKING

(A) All goods are to be packed and packaged for protection during shipment and storage in accordance with best commercial practice or ASTM-D-3951. If Government specification packaging is required, goods are to be packed and packaged in accordance with said specification(s). Highly polished, highly finished, or precision parts are to be properly preserved and packed in containers which will afford physical protection against damage and deterioration. Where appropriate, a shipment consisting of two or more shipping containers will be combined into a unitized load. A unitized load will be limited to 50 inches overall height, on a 42 inch X 48 inch pallet (double deck construction), with no more than a 4 inch overhang on any one side. All unitized loads consisting of multiple containers will be properly stacked and bound, i.e., an efficient stacking pattern, bound by stretch wrap. Any single container over 150 pounds or 60 inches or greater footprint must integrate a four-way entry skid to permit the use of standard material handling equipment. Items packaged with nonconforming packaging are subject to rejection and repackaging at Seller's expense.

(B) Each container will be marked with Buyer's contract number. Each container of a multiple container shipment will be identified to show the number of the container and the total number of containers in the shipment. The packing sheet will be enclosed in or attached to the number one container. All shipments regardless of originator must include packing sheets containing Buyer's contract number, quantity, part number/size, and description of the items shipped. Material for different contracts will be listed on separate packing sheets.

## 27. SHIPPING INSTRUCTIONS

(A) Shipments must be made as specified in this contract. Unless otherwise specified in this contract or directed in writing by Buyer's Traffic Department, if shipment does not exceed 50 pounds gross weight or 108 inches length and girth combined, ship via United Parcel Service, surface, uninsured. Originals of all Government bills of lading should be surrendered to the origin carrier at time of shipment. All commercial bills of lading, as well as any prepaid freight receipts, should be mailed to the Traffic Department of Buyer's consignee company. F.O.B. origin shipments should be routed to Buyer on a collect basis in accordance with the routing instructions provided by Buyer's authorized purchasing representative.

(B) Failure to comply with the routing instructions in this contract will result in excess freight charges and a \$25 administrative processing fee being debited to Seller.

## 28. QUALIFIED PRODUCTS LIST (QPL) ITEM SOURCES

(A) If Seller is a seller of QPL items and this contract requires QPL items, Seller certifies:

(i) By acceptance of this order, that it is a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List.

-OR-

(ii) In writing, that materials/parts being supplied pursuant to this Contract are, at the time of manufacture and shipment, produced by a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List. Certification shall accompany each shipment. This certification must also include the manufacturer's name for each item shipped to Buyer.

(B) If this contract requires assemblies or end items which contain any Government Standard Part specified on the Qualified Products List (as required by the controlling Government Specification), Seller agrees that such Government Standard Parts will be obtained only from such qualified sources or from authorized dealers/distributors. Seller will obtain and keep on file written evidence that such qualified items were, at the time of manufacture or shipment, produced by a qualified manufacturer listed, or approved for listing, on the applicable Qualified Products List. Seller will obtain and keep on file the names of such manufacturers.

## 29. OFFSET AND CO-PRODUCTION

(This Article applies only if the end-item procured hereunder is controlled by a Specification and/or Drawing provided by Buyer).

(A) Seller will use its best efforts to cooperate with Buyer in the fulfillment of any offset program obligation that Buyer may have accepted as a condition of the sale of a product of Buyer to a foreign nation.

(B) Buyer reserves the right to all "offset" credits resulting from the co-production or other similar obligations entered into between Seller and foreign sources of any goods or services in support of the procurement hereunder. Seller may not procure or offer to procure any goods or services ordered hereunder from any foreign source without the prior written approval of Buyer. This reservation applies to not only the goods and services ordered hereunder but also to the procurement of additional quantities thereof by means of options or similar commitments obtained by Seller to fulfill anticipated requirements Buyer may have. Seller may not enter into such procurements from foreign sources to support Buyer's future requirements without Buyer's prior written approval.

(C) While Buyer's approval under paragraph (B) may not be unreasonably withheld, Seller may be required to complete and file all necessary documentation in order to effect the passing through of offset credits to Buyer as a condition precedent to such approval.

### 30. EXPORT OF TECHNICAL DATA

(A) Seller represents and warrants that no technical data furnished to it by Buyer or developed by Seller directly from such data during performance of the work under this contract will be disclosed to any foreign national, firm, or country, including foreign nationals employed by or associated with the United States, without first complying with the licensing, approval, and all other requirements of the U.S. export control laws, regulations, and directives, including but not limited to the Arms Export Control Act (22 USC 2778), International Traffic in Arms Regulations (22 CFR, Part 120-130), Export Administration Act (50 USC 2401-2410 as amended), Export Administration Regulations (15 CFR Part 730-799), and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure.

(B) Seller will obtain the written consent of Buyer prior to submitting any request for authority to export any such technical data.

(C) Seller will indemnify and hold harmless Buyer for all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from failure of Seller to comply with this Article.

### 31. ANTI-KICKBACK

FAR 52.203-7 Anti-Kickback Procedure (OCT 1988) [excluding subparagraph (c)(1)]. Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (i) the Contracting Officer so directs or (ii) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract.

### 32. ASSIGNMENT

Except as hereinafter provided, neither this contract nor any duty, right, or interest therein may be delegated, assigned, or otherwise transferred in any manner by Seller without the prior written consent of Buyer. Any attempted effort to the contrary will be void and Buyer may cancel this contract. Either party may, upon notice to the other, assign this contract to any person, firm, or corporation with which such party may merge or consolidate or to which such party may assign substantially all of its assets, and either party may assign claims for monies due or to become due hereunder to any bank, trust company, or other financial institution, including any governmental lending agency. The assigning party will furnish the other party with two signed copies of any such assignment and such other documents that may be reasonably required by the non-assigning party.