



Section 9 : GOVERNMENT CONTRACT REQUIREMENTS

CLAUSE 924 (10/01/96)

SDI084-91-C-0026

ENDO LEAP PROGRAM

GOVERNMENT CONTRACT REQUIREMENTS

(a) 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" shall mean Seller.

(1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1985)

(2) 52.203-7 Anti-Kickback Procedures (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 (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.

(3) 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (SEP 1990). This clause applies only if this contract exceeds the FAR small purchase limitation. 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 or recover from Seller the amount of the reduction.

(4) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.

(5) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JAN 1990). 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 Buyer) directly to the PCO for the prime contract. Buyer will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

(6) 52.204-2 Security Requirements (APR 1984) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified material is required.

(7) 52.208-1 Required Sources for Jewel Bearings and Related Items (APR 1984)

(8) 52.210-5 New Material (APR 1984). "Contracting Officer" shall mean Buyer.

(9) 52.210-7 Used or Reconditioned Material, Residual Inventory and Former Government Surplus Property (APR 1984). "Contracting Officer" shall mean Buyer.

(10) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)

- (11) 52.215-1 Examination of Records by Comptroller General (APR 1984). This clause applies only if this contract exceeds \$10,000.
- (12) 52.215-2 Audit -- Negotiation (DEC 1989). This clause applies only if this contract exceeds \$10,000.
- (13) 52.215-27 Termination of Defined Benefit Pension Plans (SEP 1989). This clause applies only if under this contract certified cost or pricing data is required and preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
- (14) 52.215-30 Facilities Capital Cost of Money (SEP 1987). This clause applies only if Seller includes facilities capital cost of money as a proposed cost of this contract.
- (15) 52.215-31 Waiver of Facilities Capital Cost of Money (SEP 1987). This clause applies only if Seller did not include facilities capital cost of money as a proposed cost of this contract.
- (16) 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FEB 1990)
- (17) 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan (FEB 1990). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer.
- (18) 52.219-13 Utilization of Women-Owned Small Businesses (AUG 1986)
- (19) 52.220-3 Utilization of Labor Surplus Area Concerns (APR 1984)
- (20) 52.220-4 Labor Surplus Area Subcontracting Program (APR 1984). This clause applies only if this contract exceeds \$500,000.
- (21) 52.222-1 Notice to the Government of Labor Disputes (APR 1984). "Contracting Officer" shall mean Buyer.
- (22) 52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (MAR 1986). Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.
- (23) 52.222-26 Equal Opportunity (APR 1984) [subparagraphs (b)(1) through (11)]
- (24) 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984). This clause applies only if this contract is for \$10,000 or more.
- (25) 52.222-36 Affirmative Action for Handicapped Workers (APR 1984). This clause applies only if this contract exceeds \$2,500.
- (26) 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988). This clause applies only if this contract is for \$10,000 or more.
- (27) 52.223-2 Clean Air and Water (APR 1984). This clause applies only if this contract exceeds \$100,000.

- (28) 52.225-10 Duty-Free Entry (APR 1984). This clause applies only if supplies are to be afforded duty-free entry or foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.
- (29) 52.227-1 Authorization and Consent (APR 1984), Alternate I (APR 1984)
- (30) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984). This clause applies only if this contract exceeds the FAR small purchase limitation. A copy of each notice sent to the Government will be sent to Buyer.
- (31) 52.227-10 Filing of Patent Applications -- Classified Subject Matter (APR 1984)
- (32) 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if this contract requires work on a Government installation.
- (33) 52.244-5 Competition in Subcontracting (APR 1984)
- (34) 52.245-2 Government Property (DEC 1989)
- (35) 52.246-25 Limitation of Liability -- Services (APR 1984). This clause applies only if this contract exceeds \$25,000.
- (36) 52.247-63 Preference for U.S. - Flag Air Carriers (APR 1984)
- (37) 52.251-1 Government Supply Sources (APR 1984)
- (b) 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" shall mean Seller.
- (1) 252.203-7001 Special Prohibition on Employment (MAR 1989) This clause applies only if this contract exceeds \$25,000.
- (2) 252.204-7005 Overseas Distribution of Defense Subcontracts (AUG 1988)
- (3) 252.205-7000 Release of Information to Cooperative Agreement Holders (FEB 1989)
- (4) 252.208-7000 Required Sources for Miniature and Instrument Ball Bearings (JUL 1971).
- (5) 252.208-7001 Required Sources for Precision Components for Mechanical Time Devices (JUL 1971)
- (6) 252.208-7002 Required Sources for High-Purity Silicon (JUN 1983)
- (7) 252.208-7003 Required Sources for High Carbon Ferrochrome (HCF) (AUG 1984)
- (8) 252.209-7001 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate - Range Nuclear Forces (INF) Treaty (JAN 1990). This clause applies only if this contract exceeds \$25,000.
- (9) 252.215-7000 Aggregate Pricing Adjustment (APR 1985)

- (10) 252.219-7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts) (JUL 1990)
- (11) 252.225-7002 Qualifying Country Sources as Subcontractors (OCT 1980)
- (12) 252.227-7013 Rights in Technical Data and Computer Software (OCT 1988). This clause applies only if the delivery of data is required or where computer software may be originated, developed, or delivered under this contract.
- (13) 252.227-7018 Restrictive Markings on Technical Data (OCT 1988). This clause applies only if the delivery of data is required by this contract.
- (14) 252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988)
- (15) 252-227-7029 Identification of Technical Data (APR 1988)
- (16) 252.227-7030 Technical Data -- Withholding of Payment (OCT 1988). This clause applies only if the delivery of data is required by this contract. "Contracting Officer" and "Government" shall mean Buyer.
- (17) 252.227-7031 Data Requirements (OCT 1988). Modified to delete "DD Form 1423 (Contract Requirements List)" and to substitute "Data Requirements List" in lieu thereof.
- (18) 252.227-7036 Certification of Technical Data Conformity (MAY 1987)
- (19) 252.227-7037 Validation of Restrictive Markings on Technical Data (APR 1988). This clause applies only if the delivery of data is required under this contract.
- (20) 252.231-7000 Supplemental Cost Principles (DEC 1984)
- (21) 252.251-7000 Ordering From Government Supply Sources (APR 1984)

(c) Availability of Seller Records

- (1) Upon request by Buyer, Seller shall make available, in a timely manner, to Buyer and the Contracting Officer or an authorized representative of the Contracting Officer (who is an employee of the United States or a member of the Armed forces), records of the contract and of end items under the contract for:
 - (i) the proposed, negotiated, and incurred costs and related profit or fee;
 - (ii) bills of material; and
 - (iii) work measurement system data (and any revision to such data), including standard hours of work content. These work measurement system data are those generated from time standard setting, time monitoring and variance analysis, produced for such purposes as planning, cost estimating, and productivity improvement. This availability includes access to proposed and negotiated work measurement system data (and revision to such data).
- (2) Nothing in this clause shall require Seller to collect or maintain additional data not otherwise collected or maintained nor to maintain data in a form or manner different from that in which Seller maintains such data.
- (3) Any data covered by this clause shall be available for review until three years after final payment under this contract.

(d) Duty-Free Entry - Additional Provisions

Notification Applicable to All Foreign Supplies In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, Seller shall furnish the following for all foreign supplies to be imported pursuant to paragraphs (a) or (b) of the Duty-Free Entry clause. This information must be furnished to the Contracting Officer administering the prime contract, through Buyer, immediately upon award of any subcontract involving supplies to be accorded duty-free entry.

- (1) Prime contractor name, CAGE code, address, and prime contract number plus delivery order number, if applicable;
- (2) foreign supplier name and address;
- (3) number of the subcontract/purchase order for foreign supplies;
- (4) total dollar value of the subcontract for foreign supplies;
- (5) expiration date of the subcontract for foreign supplies;
- (6) list of items purchased; and,
- (7) certification by the purchaser of foreign supplies:

I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(e) ABM Treaty Conformity

The Scope of Work is in conformity with the ABM Treaty. In consonance with this, Seller will plan and conduct its detailed performance of this contract in a manner which retains the program adherence to the treaty terms as defined by the Government. The Government, through Buyer, will provide assistance and treaty interpretation as required.

(f) Coordination with other Government Agencies

If, in the performance of this contract, it is necessary for Seller to visit Government agencies to discuss any aspect of this contract, such visits shall be approved by Buyer.

(g) SDI Interface Support

Subject to coordination with Buyer, Seller agrees to cooperate with other SDI contractors by providing access to technical matters, provided, however, Seller will not be required to provide proprietary information to non-Government entities or personnel in the absence of a non-disclosure agreement between Seller and such entities.

Seller further agrees to include this clause in each lower-tier subcontract. This agreement does not relieve Seller of its responsibility to manage the lower-tier subcontracts effectively, nor is it intended to establish priority of contract between Buyer or the Government and such lower-tier subcontractors.

(h) Technology Application

This clause applies only if this contract involves experimental, developmental, or research work.

Seller shall report any innovation to Buyer within two months after such innovation is identified as a result of the work performed under this contract. An innovation is any new idea, method, process or device that has potential or apparent utility in applications different from the specific SDI application for which it was originated and is either a more effective means of accomplishing a work objective or constitutes an advance in the state of the art. An innovation includes inventions but is not limited to inventions. The report on an innovation shall include the following:

- (1) Title: A short meaningful title identifying the specific nature of the innovation.
- (2) Graphics: Any illustration which will aid in understanding the nature, function, or application of the innovation.
- (3) Description: A narrative description in sufficient detail to enable someone else working in the technology area and having a need or application for the innovation to request further details. This section should include technical functional specifications, operational parameters, and status (availability) of the innovation.
- (4) Characteristics and Potential Applications: A narrative of the unique characteristics and potential applications, including commercial applications, and potential capabilities of the innovation if further developed
- (5) Reports: A listing of reports published regarding the innovation or the associated technology by title and report number.
- (6) Source: The point of contact for obtaining more detailed information regarding the innovation to include name or office, corporation or institution, address, telephone, and contract number.

A copy of the report shall be sent directly to:

Office of Technology Applications

SDIO/TNO

Washington, D.C. 20301-7100

The purpose of establishing a reporting requirement on innovations is to create a computerized data base for the rapid and effective exchange of technical information among all Government contractors and potential Government contractors who have been approved in accordance with procedures established by the Under Secretary of Defense for Research and Engineering under DOD 5230.25 (Withholding of Unclassified Technical Data from Public Disclosure). The technical information will foster efficient and cost-efficient developments of new products both for use by the Government as well as in the commercial field. Exchange, if any, of commercial rights retained by Seller in the innovation will be between the non-governmental parties, but the exchange will recognize and acknowledge the rights of the Government obtained under the technical data and patent rights clauses included in the contract between the Government and the owner of the rights of the innovation.

Seller shall review all work performed under this contract on a semi-annual basis and provide a report to Buyer certifying that all innovations have been identified and reported. This requirement for reporting innovations will be included in the schedule of all subcontracts, at any tier, under this contract requiring the performance of experimental, developmental, or research work.

(i) Organizational Conflict Of Interest

(1) Purpose. This clause implements the provisions of the Federal Acquisition Regulations (FAR) Subpart 9.5 to ensure that:

- (i) Seller's scientific objectivity and judgment are not biased because of its present, or currently planned interests (financial, contractual, organization, or otherwise) which relate to work under this contract, and
- (ii) by virtue of its access to proprietary information belonging to others, Seller does not obtain any unfair competitive advantage.

(2) Scope. The restrictions described herein shall apply to performance or participation by Seller and any of its affiliates or their successors in the interest (hereinafter collectively referred to as "Seller") in the activities covered by this clause as subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity.

(i) Maintenance of Objectivity. This contract requires that Seller evaluate and assess work accomplished under the Broad Agency Announcement contracts for seeker head design issued by U. S. Army Strategic Defense Command, Huntsville, AL. A potential conflict of interest may exist in the requirement for Seller to review and evaluate another contractor's and possibly its own seeker head designs. This potential conflict is mitigated by the use of multiple contracts and contractors in the evaluation. If Seller participates in the performance of a Broad Agency Announcement contract for seeker head design in any capacity, including the production of information, studies, documents, recommendations or reviews which relate to the work performed under this contract, then Seller may review that portion of the prior effort in which Seller participated only with the consent of the Contracting Officer.

(ii) Access to and Protection of Proprietary Information. Seller agrees that, to the extent it receives or is given access to proprietary data, trade secrets, or other confidential or privileged technical, business, or financial information (hereinafter referred to as "proprietary data") under this contract, it shall treat such information in accordance with any restrictions imposed on such information. Information furnished voluntarily by the owner without limitations on its use, or is available without restrictions imposed on such limitations on its use, or is available without restrictions from other sources, is not considered proprietary. Seller further agrees to negotiate a written agreement with each of the Broad Agency Announcement seeker head design contractors for the protection of their proprietary data and to provide a copy of each such agreement to the Contracting Officer through Buyer. Seller shall exercise diligent effort to protect such proprietary data from unauthorized use or disclosure. Seller will inculcate in its employees the philosophy of Part 9.505-4 of the Federal Acquisition Regulation so that they will not use or disclose proprietary information or data generated or acquired in the performance of this contract except as provided herein.

(3) Subcontracts. Seller shall include this clause, including this paragraph, in consulting agreements and subcontracts of any tier. The terms "Contract," "Contractor," "Seller," and "Contracting Officer" will be appropriately modified to preserve Buyer's and the Government's rights.

(4) Representations and Disclosure.

(i) Seller shall provide to Buyer a representation that it has disclosed to the Contracting Officer, through Buyer, prior to award, all facts relevant to the existence or potential existence of organizational conflict of interest as that term is used in the FAR Subpart 9.5.

(ii) Seller agrees that if after award it discovers an organizational conflict of interest with respect to this contract, a prompt and full disclosure shall be made in writing to the Contracting Officer through Buyer which shall include a description of the action Seller has taken or proposes to take to avoid or mitigate such conflicts.

(5) Restrictions on Future Contracts. Seller shall refrain from using the proprietary data obtained under this contract in supplying seeker heads to the Government under other contracts or for any purpose other than that for which it was intended.

(6) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, Buyer may terminate this contract for default, disqualifying Seller for

subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract. If, however, in compliance with this clause, Seller discovers and promptly reports an organizational conflict of interest (or the potential therefor) subsequent to contract award, Buyer may terminate this contract for convenience if such termination is deemed to be in the best interest of Buyer and the Government.

(7) Indemnity. Seller shall hold Buyer and the Government harmless and indemnify Buyer and the Government as to any cost or loss resulting from the unauthorized use or disclosure of third party information data or software by Seller, its employees, subcontractors or agents.

(j) Notification of Transportation of Supplies by Sea

This clause applies only if Seller submitted a negative response to solicitation representation entitled "Transportation of Supplies by Sea."

(1) Seller has represented that it did not anticipate transporting by sea any supplies, as defined in the clause at 252.247-7203, Transportation of Supplies by Sea, in the performance of this contract. If, however, after the award of this contract, Seller should learn that supplies will be transported by sea, Seller shall notify the Contracting Officer through Buyer of the fact that transportation by seal will be used and hereby agrees to comply with all the terms and conditions of the clause entitled "Transportation of Supplies by Sea", contained in this contract.

(2) Seller shall include this clause, including this paragraph (2), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.