



Section 9 : GOVERNMENT CONTRACT REQUIREMENTS

CLAUSE 989 (3/11/99)

F04701-98-9-0005

EELV - DEVELOPMENT

GOVERNMENT CONTRACT REQUIREMENTS

(a) Government Insight

(1) Government insight is defined as the Government gaining an understanding of the development's progress to meet this contract's requirements through watchful observation. Only EELV program-related information shall be observable and only for the purpose of performance of this contract. For the purposes of this contract, "EELV program-related information" means data pertaining to the development of the launch system to meet the Government's EELV requirements, technical data from related programs, to the extent that such data is used in the development of the EELV, and technical data from Delta IV launch vehicle commercial programs to the extent that such data is not restricted from release by a commercial customer. During the development effort Seller shall provide the Government insight into all activities, including subcontractor and supplier activities, to assess Buyer's progress in completing its contract with the Government. To enable Government insight, Seller shall provide the Government free and open access to all matters relating to this contract. This access includes, but is not limited to, the following: (i) Seller's facilities used in the performance of this contract; (ii) work sites at Cape Canaveral AS and Vandenberg AFB during construction; (iii) Seller's meetings conducted in the performance of this contract, to include scheduled program reviews, technical interchange meetings (TIMs), configuration control boards, etc., with participation in discussions during these meetings and in any follow-up dialogues on the subject matters discussed; (iv) program activities, such as, but not limited to, observing test events; (v) Seller's training programs, including, but not limited to, on-the-job training; (vi) all data directly related to the program (except for cost and financial data), such as, but not limited to, design and development analyses at the system, subsystem, and component levels; test data and results; all EELV flight data and results; equipment and process specifications; test and test equipment specifications and procedures; parts and quality control procedures, records, and data; manufacturing and assembly procedures; courseware (e.g., lesson plans, study guides, and tests); management schedules, plans, and tools, all in their original form or reproduced form, and to join in discussions with Seller on this data, and (vii) Seller shall identify and provide access to all information and analyses regarding any incidents or anomalies occurring during fabrication, assembly, test, handling, or transportation which could affect the integrity of the EELV system. The Government may offer feedback to Seller for its consideration but shall not have approval/disapproval rights

(2) For purposes of this clause Seller shall provide Government insight to individuals identified by the Agreements Officer. These individuals may be Government personnel, employees of the Aerospace Corporation assigned to the Aerospace FFRDC contract and/or employees of Advisory and Assistance Services contractors that support EELV. The Government will ensure that all individuals who have insight into Seller's activities protect all information received/accessed from unauthorized disclosure.

(b) Government Rights in Data

(1) As a minimum, the Government shall have Government Reporting and Use Rights in that Data made available to the Government and data obtained through insight activities pursuant to paragraph (a), Government Insight. Should the Government identify a Requirement for additional rights in this data, Seller agrees to negotiate in good faith with the Government and/or Buyer an appropriate license including reasonable royalties.

(2) "Government Reporting and Use Rights," as used in this paragraph, means rights to use, duplicate, or disclose Data within the Government, in whole or in part and in any manner, for training, reporting and evaluation purposes. For purposes of this definition, the phrase "within the Government" includes those non-government individuals who have been identified by the Agreements Officer as authorized to have insight pursuant to paragraph (a), Government Insight.

(c) Excusable Delay and Nonperformance

(1) Except as set forth below, Seller shall not be held responsible for delays in completion, or failure to meet any milestone or delivery date, if the delay or nonperformance is caused by an occurrence beyond the reasonable control of Seller and without its fault or negligence, such as, acts of God or the public enemy, acts of government, fires, floods, epidemics, quarantine restrictions, strikes, unusual severe weather, and delays of common carriers. Seller shall verbally notify Buyer immediately and then in writing within 20 working days or less after commencement of any excusable delay that will affect the performance of this contract, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Buyer of the cessation of such occurrence.

(2) In the event Seller elects to use foreign technology, including but not limited to that of the Former Soviet Union (FSU), it is expressly understood that Seller accepts all risks associated with such an international transaction. Specifically, neither the United States Government, as a sovereign, nor Buyer has any obligation to negotiate agreements with a foreign government. Any impacts, to include cost or schedule impacts, of such agreements on Seller will be borne entirely by Seller on this effort. Therefore, any delays or nonperformance caused by use of foreign technology shall not be excused and Buyer may, if appropriate, terminate this agreement for default. However, the parties may elect to modify this contract, including the milestone or delivery schedule, to accommodate any delays caused by the use of foreign technology. DoD policies on FSU propulsion and other foreign technology will be adhered to by Seller.

(3) In the event Buyer causes a demonstrable delay in Seller providing its best effort to meet any milestone or delivery date, Buyer and Seller shall mutually agree to a modified milestone or delivery schedule and/or an equitable adjustment pursuant to the Changes clause.

(4) In no event shall Seller be entitled to an equitable adjustment under this contract or any other claims for any lost time or costs incurred by Seller due to any disruption of its activities at the launch sites/ranges, regardless of frequency or duration of any such interruptions, including disruptions of commercial activities, or for any delay in entry, temporary loss of access, barring of individual employees from the base under federal laws authorizing such actions, limitation or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to or unavailable at their work stations, or any delay in arrival of parts or supplies. However, if Seller can sufficiently demonstrate that any such disruption caused a delay impacting its ability to provide its best effort in meeting any milestone or delivery date, then Buyer and Seller shall modify the milestone or delivery schedule pursuant to the Changes clause.

(5) Nothing in subparagraphs (1), (2), or (4) of this clause creates any liability on the part of Buyer for additional costs arising from the delays caused by the events described in this clause.

(d) Civil Rights Act. This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in Federally assisted programs.

(e) Environmental Requirements. Seller's work under this contract will be performed, and goods delivered will operate, within applicable laws and regulations without waivers and will minimize the use and generation of hazardous materials at all sites to include launch and manufacturing sites.

(f) Hazardous Materials Management.

(1) In performing work under this contract, Seller shall not use Class I Ozone-Depleting Substances (ODSs) in manufacturing. Further, Seller shall avoid any design feature that will require the use of ODSs in maintenance, launch processing, or system disposal.

(2) Seller's design shall either: (i) identify, justify, and minimize, or (ii) eliminate, requirements for the usage of Class II ODSs and EPCRA Section 313 chemicals.

(3) Upon written request by Buyer, Seller will provide usage data for Class II ODSs and EPCRA Section 313 chemicals. Buyer's request may include copies of Seller's then-current environmental plans, reports, or other like documentation that supports its efforts to minimize the use and generation of hazardous materials.

(g) APPLICABLE FAR CLAUSES

FAR 52.204-2, Security Requirements (AUG 1996)