



Section 9 : GOVERNMENT CONTRACT REQUIREMENTS

CLAUSE 985 (7/13/99)

HQ0006-98-C-0003

NATIONAL MISSILE DEFENSE

SYSTEM DEVELOPMENT

GOVERNMENT CONTRACT REQUIREMENTS

(a) The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for elsewhere in this contract, only subparagraphs (14), (15), (16), and (28) of this paragraph (a) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.

- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.
- (2) 52.203-7 Anti-Kickback Procedures (JUL 1995) [excluding subparagraph (c)(1)]. This clause applies only if this contract exceeds \$100,000. 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 (JAN 1997). This clause applies only if this contract exceeds \$100,000. 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)
- (5) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997). 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 (AUG 1996) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified information is required.

(7) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)

(8) 52.215-2 Audit and Records -- Negotiation (AUG 1996). This clause applies only if this contract exceeds \$100,000 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.

(9) 52.215-27 Termination of Defined Benefit Pension Plans (MAR 1996). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. 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.

(10) 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (MAR 1996). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. 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.

(11) 52.215-40 Notification of Ownership Changes (FEB 1995). This clause applies only if under this contract certified cost or pricing data is required or 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.

(12) 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (JUN 1997)

(13) 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (AUG 1996). 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.

(14) 52.222-26 Equal Opportunity (FEB 1999) [subparagraphs (b)(1) through (11)]

(15) 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.

(16) 52.222-36 Affirmative Action for Handicapped Workers (APR 1984). This clause applies only if this contract exceeds \$2,500.

(17) 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.

(18) 52.223-2 Clean Air and Water (APR 1984). This clause applies only if this contract exceeds \$100,000.

(19) 52.223-11 Ozone-Depleting Substances (JUN 1996)

(20) 52.223-14 Toxic Chemical Release Reporting (OCT 1996) [excluding paragraph (e)]. This clause applies only if this contract (including all options) exceeds \$100,000, the contract is not for commercial items, as defined in FAR Part 12, and Seller has a SIC designation of major groups 20 through 39 as set forth in FAR 19.102.

(21) 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.

(22) 52.225-11 Restrictions on Certain Foreign Purchases (OCT 1996)

(23) 52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)

(24) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds \$100,000. A copy of each notice sent to the Government will be sent to Buyer.

(25) 52.227-10 Filing of Patent Applications -- Classified Subject Matter (APR 1984)

(26) 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.

(27) 52.244-5 Competition in Subcontracting (DEC 1996)

(28) 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1995)

(29) 52.245-2 Government Property (DEC 1989)

(30) 52.245-18 Special Test Equipment (FEB 1993)

(31) 52.247-63 Preference for U.S. - Flag Air Carriers (APR 1984). This clause applies only if this contract may involve international air transportation.

(32) 52.251-1 Government Supply Sources (APR 1984). This clause applies only if Seller is notified by Buyer that it is authorized to purchase from Government supply sources in the performance of this contract.

(33) 52.253-1 Computer Generated Forms (JAN 1991)

(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 (JUN 1997) [excluding paragraph (g)]. This clause applies only if this contract exceeds \$100,000 and is not for commercial items or components.

(2) 252.204-7000 Disclosure of Information (DEC 1991). Seller will submit requests for authorization to release through Buyer.

- (3) 252.204-7003 Control of Government Personnel Work Product (APR 1992)
- (4) 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991)
- (5) 252.209-7000 Acquisition From Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (NOV 1995). This clause applies only if this contract exceeds \$100,000 and is not for commercial items.
- (6) 252.211-7000 Acquisition Streamlining (DEC 1991). This clause applies only if this contract exceeds \$1,000,000.
- (7) 252.215-7000 Pricing Adjustments (DEC 1991)
- (8) 252.219-7003 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts) (APR 1996)
- (9) 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993)
- (10) 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (FEB 1996). Insert "TBD" in paragraph (b) of the referenced clause.
- (11) 252.225-7012 Preference for Certain Domestic Commodities (SEP 1997)
- (12) 252.225-7014 Preference for Domestic Specialty Metals (FEB 1997)
- (13) 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (FEB 1998)
- (14) 252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (JUN 1997)
- (15) 252.225-7026 Reporting of Contract Performance Outside the United States (NOV 1995). This clause applies only if this contract exceeds \$100,000 and is not for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.
- (16) 252.225-7030 Restriction on Acquisition of Carbon, Alloy and Armor Steel Plate (OCT 1992)
- (17) 252.227-7013 Rights in Technical Data -- Noncommercial Items (NOV 1995). This clause applies only if this contract requires Seller to provide noncommercial technical data to Buyer for delivery to the Government.
- (18) 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995). This clause applies only if this contract requires Seller to provide noncommercial computer software or noncommercial computer software documentation to Buyer for delivery to the Government.
- (19) 252.227-7016 Rights in Bid or Proposal Information (JUN 1995)
- (20) 252.227-7019 Validation of Asserted Restrictions _ Computer Software (JUN 1995). This clause

applies only if this contract requires Seller to provide computer software to Buyer for delivery to the Government.

(21) 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (JUN 1995)

(22) 252.227-7027 Deferred Ordering of Technical Data or Computer Software (APR 1988). This clause applies only if technical data or computer software may be generated as part of the performance of this contract.

(23) 252.227-7030 Technical Data - Withholding of Payment (OCT 1988). In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract.

(24) 252.227-7036 Certification of Technical Data Conformity (JAN 1997). This clause applies only if the delivery of technical data is required under this contract.

(25) 252.227-7037 Validation of Restrictive Markings on Technical Data (NOV 1995). This clause applies only if the delivery of technical data is required under this contract and the contract is not for commercial items or commercial components.

(26) 252.231-7000 Supplemental Cost Principles (DEC 1991)

(27) 252.235-7003 Frequency Authorization (DEC 1991). This clause applies only if this contract involves the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(28) 252.245-7001 Reports of Government Property (MAY 1994). Seller will provide information Buyer may require to complete Buyer's annual report.

(29) 252.247-7023 Transportation of Supplies by Sea (NOV 1995). This clause applies only if this contract exceeds \$100,000.

(30) 252.247-7024 Notification of Transportation of Supplies by Sea (NOV 1995). "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause applies only if this contract is not for commercial items or components.

(31) 252.251-7000 Ordering From Government Supply Sources (MAY 1995). This clause applies only if Seller is notified by Buyer that it is authorized to purchase from Government supply sources in the performance of this contract.

(c) Cost Accounting Standards

If clause 383 or 384 is incorporated in this contract, the FAR designation for the "Administration of Cost Accounting Standards" clause is hereby changed from FAR 52.230-5 to FAR 52.230-6 and the dates of the clauses are hereby changed from AUG 1992 to APR 1996.

(d) Public Release of Information

- (1) The policies and procedures outlined apply to information submitted by Seller and its subcontractors for approval for public release. Prior to public release, all information shall be cleared as shown in the "National Industrial Security Program Operating" (DoD 5220.22-M)
- (2) All public information materials prepared by Seller shall be submitted to the BMDO, through Buyer, for clearance prior to release. These materials include, but are not limited to, technical papers and responses to news queries which relate to a Contractor's work under this contract.
- (3) Once information has been cleared for public release, it does not have to be cleared again for later use. The information shall be used in its originally cleared context.
- (4) Seller shall submit the material proposed for public release to Buyer's authorized purchasing representative by a letter of transmittal which states: (i) to whom the material is to be released; (ii) the desired date for public release; (iii) that the material has been reviewed and approved by officials of Seller, or the subcontractor, for public release; and (iv) the contract number.
- (5) Two copies of each item, including written material, photographs, drawings, "dummy layouts," and the like shall be submitted at least six weeks in advance of the proposed release date.
- (6) The items submitted must be complete. Photographs shall have captions.
- (7) Abbreviated materials or abstracts may be submitted if the intent is to determine the feasibility of going further in preparing a complete paper for clearance. However, final approval for release or disclosure of the material cannot be given on the basis of abstracts.
- (8) Outlines or rough drafts will not be cleared.
- (9) Materials submitted to BMDO for release purposes shall be void of all logos or other attributions to Seller.

(e) Enabling Clause for National Missile Defense Interface Support

It is anticipated that, during performance of this contract, Seller may be required to support meetings with other BMD contractors and other Government agencies. Seller agrees that if this support is required, it will, if necessary, enter into appropriate organizational conflict of interest agreements to protect the rights of the BMD contractors and the Government. Seller will coordinate any such agreements with Buyer's authorized purchasing representative. This clause is not intended to establish privity of contract between the Government and Seller, nor does it prejudice the right of Seller to negotiate separate organizational conflict of interest agreements with BMD contractors; however, any such agreements shall not restrict any of the Government's rights established pursuant to the Enabling Clause for NMD Interface Support in Buyer's contract with the Government.

(f) Cost and Pricing Data

If clause 307 or 308 is incorporated in this contract, the following changes are made:

- (1) In paragraph (a): Delete "FAR 52.215-25" and substitute in lieu thereof "FAR 52.215-13 (OCT 1997)." Delete the words "in effect on the date of this contract." In clause 307 only, delete "FAR 52.215-24" and substitute in lieu thereof "FAR 52.215-12 (OCT 1997)."

(2) In paragraph (b)(1): Delete "FAR 15.804-2, 15.804-4, 15.804-6, 15.806-1, and 15.806-2, in effect on the date of this contract" and substitute in lieu thereof "FAR 15.403-4, 15.403-5, 15.404-3, and 15.406-2, in effect on **April 30, 1998.**"

(3) In paragraph (b)(3): Delete "FAR 52.215-22(d) or 52.215-23(e)" and substitute in lieu thereof "FAR 52.215-10(d) (OCT 1997) or 52.215-11(e) (OCT 1997)."

(4) In paragraph (b)(5): Delete "FAR 52.215-22(c)(1)" and substitute in lieu thereof "FAR 52.215-10(c)(1) (OCT 1997)."

(g) Organizational Conflict of Interest

(1) Purpose. This clause is to aid in ensuring that: Seller's scientific objectivity and judgment are not biased because of present or planned interests (financial, contractual, organizational or otherwise) which relate to work under this order; Seller does not obtain an unfair competitive advantage by virtue of its access to non-public Government information regarding Government program plans and actual or anticipated resources; and Seller does not obtain any unfair competitive advantage by virtue of its access to proprietary information belonging to others. Restrictions described herein shall apply to performance or participation by Seller and any of its affiliates or their successors in interest in the activities covered by this clause as subcontractor, co-sponsor, joint venturer, consultant or in any similar capacity. Information furnished voluntarily by the owner without limitations on its use, or which is available without restrictions from other sources, is not considered proprietary.

(2) Access To & Use of Government Information. If in the performance of this order, Seller obtains access to information such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, Seller agrees that without prior written approval of Buyer it shall not use such information for any private purpose unless the information has been released or otherwise made available to the public; compete for work, other than the LSI contract, based on such information after the completion of this order, or until such information is released or otherwise made available to the public, whichever occurs first; submit an unsolicited proposal to the Government which is based on such information after such information is released or otherwise made available to the public; or release such information unless such information has previously been released or otherwise made available to the public by the Government.

(3) Access To & 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 order, it shall treat such information in accordance with any restrictions imposed on such information. Seller further agrees to enter into a written agreement for the protection of the proprietary data of others and to exercise diligent effort to protect such proprietary data from unauthorized use or disclosure. In addition, Seller shall obtain from each employee who has access to proprietary data under this order a written agreement which shall in substance provide that such employee shall not, during his/her employment by Seller or thereafter, disclose to others or use for their benefit proprietary data received in connection with work under this order. Seller will educate its employees regarding 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 order except as provided herein.

(4) Disclosures. If Seller discovers an organizational conflict of interest or potential conflict of interest after award, a prompt and full disclosure shall be made in writing to the Buyer. This disclosure shall be include a description of the action the Seller has taken or proposes to take in order to avoid or mitigate

such conflicts.

(5) Remedies & Waiver. For breach of any of the above restrictions or for non-disclosure or misrepresentation of any relevant facts required to be disclosed concerning this order, Buyer may terminate this order for default, disqualify Seller for subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this order. If, however, in compliance with this clause, the Seller discovers and promptly reports an actual or potential organizational conflict of interest subsequent to award of the order, Buyer may terminate this order for convenience if such termination is determined to be in Buyer's best interest. Seller recognizes that this clause has potential effects which will survive performance of this order and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, Seller may at any time seek a waiver from the Director, BMDO (via Buyer) by submitting a full written description of requested waiver and reasons in support thereof.

(6) Certification Restriction. Seller shall be restricted from performing validation, verification, accreditation or certification of any products developed or delivered under this order. Seller shall not serve as a software independent validation and verification contractor for any software developed or delivered under this order.

(7) Modifications. Prior to order modification, when the statement of work is changed to add new work or the period of performance is significantly increased, Buyer may require Seller to submit to the Government through Buyer either an organizational conflict of interest disclosure or an update of the previously submitted disclosure or representation.

(8) Subcontracts. Seller shall include this or substantially the same clause in consulting agreements and subcontracts of all tiers. The terms "contract," "order," "Seller," and "Buyer" will be appropriately modified to preserve the Government's and Buyer's rights.