

**CUSTOMER CONTRACT REQUIREMENTS  
AWACS EMD CNS/ATM DRAGON PROGRAM  
CUSTOMER CONTRACT F19628-01-D-0016 DO 0073**

## CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

**1. FAR Clauses** 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" mean Seller.

**52.203-6 Restrictions on Subcontractor Sales to the Government** (SEP 2006). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold.

**52.203-7 Anti-Kickback Procedures** (OCT 2010). 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. This clause applies only if this contract exceeds \$150,000.

**52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity** (JAN 1997). This clause applies to this contract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. The Seller shall indemnify Buyer for any and all losses suffered by the Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.

**52.203-10 Price or Fee Adjustment for Illegal or Improper Activity** (JAN 1997). This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. 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 from sums owed Seller the amount of the reduction.

**52.203-12 Limitation on Payments to Influence Certain Federal Transactions** (OCT 2010). This clause applies only if this contract exceeds \$150,000. Paragraph (g)(2) is modified to read as follows: "(g)(2) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

**52.203-14 Display of Hotline Poster(s)** (DEC 2007). This clause applies only if this contract is in excess of \$5,000,000 and is not for a commercial item or performed entirely outside the United States. For the purposes of this clause, the United States is defined as the 50 states, the District of Columbia, and outlying areas.

**52.204-2 Security Requirements** (AUG 1996). Changes clause means the changes clause of this contract. This clause applies only if access to classified material is required.

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (DEC 2010). This clause applies to contracts that exceed \$30,000 and is not a contract or subcontract for commercially available off-the-shelf items. "Contracting Officer" means "Buyer." Seller shall disclose to Buyer, in writing, whether as of the time of Buyer's offered contract herein, Seller or its principals, is or is not debarred, suspended or proposed for debarment by the Federal Government.

**52.211-5 Material Requirements** (AUG 2000). Any notice will be given to Buyer rather than the Contracting Officer.

**52.211-15 Defense Priority and Allocation Requirements** (APR 2008). This clause is applicable if a priority rating is noted in this contract.

**52.215-2 Audit and Records - Negotiation** (OCT 2010). This clause applies only if this contract exceeds \$150,000 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.

**52.215-10 Price Reduction for Defective Certified Cost or Pricing Data** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."

**52.215-12 Subcontractor Certified Cost or Pricing Data** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

**52.215-14 Integrity of Unit Prices** (OCT 2010). This clause applies except for contracts at or below \$150,000; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

**52.215-15 Pension Adjustments and Asset Reversions** (OCT 2010). This Clause applies to this contract if it meets the requirements of FAR 15.408(g).

**52.215-18 Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions** (JUL 2005). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

**52.215-21 Requirement for Certified Cost or Pricing Data or Information Other Than Certified Cost and Pricing Data - Modifications** (OCT 2010). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer.

**52.219-8 Utilization of Small Business Concerns** (JAN 2011).

**52.219-9 Small-Business Subcontracting Plan** (JAN 2011). This clause applies only if this contract exceeds \$650,000 and Seller is not a small business concern. Seller shall adopt a subcontracting plan that complies with the requirements of this clause. In addition, Seller shall submit to Buyer Form X31162, Small and Small Disadvantaged Business and Women-Owned Small Business Subcontracting Plan Certificate of Compliance. In accordance with paragraph (d)(10)(iv), Seller agrees that it will submit the ISR and/or SSR using eSRS, and, in accordance with paragraph (d)(10)(vi), Seller agrees to provide the prime contract number, its own DUNS number, and the email address of Seller's official responsible for acknowledging or rejecting the ISRs, to its subcontractors with subcontracting plans. As required by subparagraph (d)(10)(v), the following information is provided: (1) the prime contract number is F19628-01-D-0016, DO 73; (2) Buyer's DUNS number is 39267141, and (3) the email address of Buyer's official responsible for acknowledging receipt of or rejecting reports is (contact Buyer's Authorized Procurement Representative).

**52.222-1 Notice to the Government of Labor Disputes** (FEB 1997). Contracting Officer shall mean Buyer.

**52.222-20 Walsh-Healey Public Contracts Act** (OCT 2010). This clause applies only if this contract exceeds \$15,000.

**52.222-21 Prohibition of Segregated Facilities** (FEB 1999).

**52.222-26 Equal Opportunity (subparagraphs (b) (1) through (b) (11))** (FEB 1999).

**52.222-35 Equal Opportunity for Veterans.** (SEP 2010). This clause applies only if this contract is \$100,000 or more.

**52.222-36 Affirmative Action For Workers With Disabilities** (OCT 2010). This clause applies only if this contract exceeds \$15,000.

**52.222-37 Employment Reports on Veterans** (SEP 2010). This clause applies if this contract is \$100,000 or more.

**52.222-50 Combating Trafficking in Persons** (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

**52.223-3 Hazardous Material Identification and Material Safety Data** (JAN 1997). This clause applies only if Seller delivers hazardous material under this contract.

**52.223-7 Notice of Radioactive Materials** (JAN 1997). This clause applies only if this contract involves (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. "Contracting Officer" shall mean Buyer. In the blank in paragraph (a), insert "60 days."

**52.223-11 Ozone Depleting Substances** (MAY 2001).

**52.223-13 Certification of Toxic Chemical Release Reporting** (AUG 2003). Except for commercial items as defined in FAR Part 2, this clause applies to competitive procurements expected to exceed \$100,000 (including all options). If Seller is not subject to the Form R filing and reporting requirements, Seller shall inform Buyer which exemption or exemptions in subparagraph (b)(2) of this clause apply.

**52.223-14 Toxic Chemical Release Reporting** (AUG 2003). This clause applies only if this contract is not for commercial items as defined in FAR Part 2, was competitively awarded, and exceeds \$100,000 (including all options).

**52.225-13 Restriction on Certain Foreign Purchases** (JUN 2008).

**52.227-1 Authorization and Consent** (DEC 2007).

**52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement** (DEC 2007). A copy of each notice sent to the Government will be sent to Buyer.

**52.227-11 Patent Rights -- Ownership by the Contractor** (DEC 2007). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization. Buyer's customer has requested a copy of the patent application, when filed, along with the patent application serial number, filing date, subsequent U.S. patent number, and issue date, as received.

**52.228-3 Workers' Compensation Insurance (Defense Base Act)** (APR 1984).

**52.228-4 Workers' Compensation and War Hazard Insurance Overseas** (APR 1984).

**52.228-5 Insurance - Work on a Government Installation** (JAN 1997). Seller shall provide and maintain insurance as set forth in this contract.

**52.230-6 Administration of Cost Accounting Standards** (JUN 2010). Add "Buyer and the" before "CFAO" in paragraph (m). This provision applies if clause H001, H002, H004 or H007 is included in this contract.

**52.237-2 Protection of Government Buildings, Equipment, and Vegetation** (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

**52.242-15 Stop-Work Order** (AUG 1989). Change "90 days" and "30 days" to "100 days" and "20 days" respectively. The terms "Contracting Officer" and "Government" shall mean Buyer.

**52.244-5 Competition in Subcontracting** (DEC 1996).

**52.244-6 Subcontracts for Commercial Items** (DEC 2010).

**52.245-1 Government Property** (AUG 2010).

This clause applies only if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer. Paragraph (h)(1) is deleted and replaced by the following: "Seller assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to Seller as Government-furnished property. However, Seller is not responsible for reasonable wear and tear to Government Property or for Government property properly consumed in performing

this contract." If the contract incorporates Boeing General Provision GP4, the Government-Owned Property article in GP4 is hereby deleted.

**52.247-63 Preference for U.S.-Flag Air Carriers** (JUN 2003). This clause only applies if this contract involves international air transportation.

**2. DoD FAR Supplement Clauses** DoD Contracts. 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" mean Seller except as otherwise noted.

**252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies** (DEC 2008).

This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold and is not for the purchase of commercial items or commercial components. Except in paragraph (a), "this contract" and "the contract" mean the contract between Buyer and Seller. In subparagraph (d)(2), delete the words "or first-tier subcontractor." In paragraph (e), the remedies described in subparagraphs (2) and (3) are available to Buyer, not the Government. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer." Paragraph (g) is deleted.

**252.204-7000 Disclosure of Information** (DEC 1991). Seller will submit requests for authorization to release through Buyer. Seller shall submit written requests to Buyer a minimum of 60 days prior to proposed date of release.

**252.204-7008 Requirements for Contracts Involving Export-Controlled Items.** (APR 2010).

**252.211-7000 Acquisition Streamlining** (OCT 2010). This clause applies only if this contract exceeds \$1.5 million.

**252.211-7003 Item Identification and Valuation** (AUG 2008). Seller shall comply with the unique item identification requirements of this clause for those subassemblies, components, and parts specified elsewhere in this contract. Such identification and marking shall be a high-capacity 2D machine readable code to comply with the version of MIL-STD-130, Identification Marking of U.S. Military Property, set forth elsewhere in this contract; or if not so stated, then the Seller shall comply with MIL-STD-130 N. The code may include, as space is available, linear bar code and human readable characters. Unless otherwise specified in Boeing product drawings or specifications, the seller may use either Construct #1 or Construct #2. The Seller shall not be required to furnish item valuations as set forth in this clause.

**252.215-7000 Pricing Adjustments** (DEC 1991). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4.

**252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements** (DEC 2010).

This clause applies to all solicitations and contracts (including task or delivery orders and bilateral modifications adding new work) valued in excess of \$1 million, except for contracts for the acquisition of commercial items, including commercially available off-the-shelf-items. Seller agrees to flow down this clause to all covered subcontractors. Seller agrees by accepting this contract that it shall not enter into, and shall not take any action to enforce, any provision of any existing agreements, as describe in paragraph (b)(1) of this clause, with respect to any of Seller's employees or independent contractors performing work for Seller related to this contract.

**252.223-7002 Safety Precautions for Ammunition and Explosives** (MAY 1994). This clause applies only if this contract involves ammunition or explosives. "Government" means Government or Buyer in paragraph (b)(2), each time it appears in (e), (f)(1), (f)(2), the first time it appears in (g)(1)(i), and in (g)(3). "Government" means Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).

**252.223-7003 Change in Place of Performance-Ammunition and Explosives** (DEC 1991). This clause applies only if DFARS 252.223-7002 is applicable to this contract. The term "Contracting Officer" means Buyer.

**252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials** (APR 1993).

**252.225-7001 Buy American Act and Balance of Payments Program** (JAN 2009).

**252.225-7002 Qualifying Country Sources as Subcontractors** (APR 2003).

**252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES** (OCT 2010). In subparagraph (b), "within 10 days after" is replaced by "10 days prior to." In subparagraph (d), "Deputy Director of Defense Procurement and Acquisition Policy" means "Buyer." In (e)(2), "from the Contracting Officer" is deleted.

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals** (JAN 2011).

**252.225-7013 Duty Free Entry** (DEC 2009). This clause applies if Seller is located in a qualifying country (as defined in DFARS Part 225.8) or if Seller is located in any other country and the estimated U.S. duty for the deliverable items will exceed \$200 per unit. Seller shall include the prime contract number on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause. The information required by paragraph (j)(3) of this clause is available upon request.

**252.225-7043 Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States** (MAR 2006). This clause applies only if this contract requires Seller to perform or travel outside the United States and Seller is not (i) a foreign government, (ii) a representative of a foreign government, or (iii) a foreign corporation wholly owned by a foreign government..

**252.227-7013 Rights In Technical Data -- Noncommercial Items** (NOV 1995). This clause applies only if the delivery of data is required for noncommercial items under this contract.

**252.227-7014 Rights In Noncommercial Computer Software And Noncommercial Computer Software Documentation** (JUN 1995). This clause applies only if the delivery of noncommercial computer software or noncommercial computer documentation may be originated, developed or delivered under this contract.

**252.227-7015 Technical Data -- Commercial Items** (MAR 2011). This clause applies only if the delivery of data is required for commercial items under this contract.

**252.227-7016 Rights in Bid or Proposal Information** (JAN 2011).

**252.227-7019 Validation of Asserted Restrictions - Computer Software** (JUN 1995). This clause applies only if computer software may be originated, developed, or delivered under this contract.

**252.227-7030 Technical Data -- Withholding of Payment** (MAR 2000). 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.

**252.227-7037 Validation of Restrictive Markings on Technical Data** (SEP 1999). This clause applies only if the delivery of data is required by this contract.

**252.227-7038 PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS)** (DEC 2007). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business firm or nonprofit organization. Buyer's customer has requested a copy of the patent application, when filed, along with the patent application serial number, filing date, subsequent U.S. patent number, and issue date, as received.

**252.228-7001 Ground and Flight Risk** (JUN 2010).

**252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles** (DEC 1991).

**252.231-7000 Supplemental Cost Principles** (DEC 1991).

**252.234-7001 Notice of Earned Value Management System** (APR 2008). This clause applies only if 252.234-7002 is applicable.

**252.234-7002 Earned Value Management System** (MAY 2011). This clause applies only if it is indicated elsewhere in this contract that Seller must use an earned value management system (EVMS).

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

**252.239-7000 Protection Against Compromising Emanations** (JUN 2004). This clause applies only if computer equipment or systems that will be used to process classified information will be delivered under this contract.

**252.243-7001 Pricing of Contract Modifications** (DEC 1991).

**252.247-7023 Transportation of Supplies by Sea** (MAY 2002). This clause applies only if the supplies are of a type described in paragraph (b)(2) of this clause. In paragraph (d), "45 days" is changed to "60 days." In paragraph (g) "Government" means Buyer. This clause applies only if this contract exceeds (i) \$100,000 if included in Buyer's customer RFP or customer contract issued before October 1, 2010 or (ii) \$150,000 if included in Buyer's customer RFP issued on or after October 1, 2010, or if the prime contract was issued prior to October 1, 2010 but was amended after October 1, 2010 to increase the Simplified Acquisition Threshold. Paragraphs (f) and (g) are excluded.

**252.247-7024 Notification of Transportation of Supplies by Sea** (MAR 2000). Contracting Officer and, in the first sentence of paragraph (a), Contractor mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

**252.249-7002 Notification Of Anticipated Contract Termination Or Reduction** (DEC 2006). This clause applies only if this contract is \$550,000 or more. Seller will comply with the notice and flowdown requirements of paragraph (d)(2) of the referenced clause.

**252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS** (NOV 2010).

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

(DOD CONTRACTS)

**3. Commercial Items** If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:

**52.203-13 Contractor Code of Business Ethics and Conduct** (APR 2010). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

**52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009** (JUN 2010). This clause applies if this contract is funded in whole or in part with Recovery Act funds.

**52.209-6 Protecting the Government's Interests When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment** (DEC 2010). Seller agrees it is not debarred, suspended, or proposed for debarment by the Federal Government. Seller shall disclose to Buyer, in writing, whether as of the time of award of this contract, Seller or its principals is or is not debarred, suspended, or proposed for debarment by the Federal Government.

**52.219-8 Utilization of Small Business Concerns** (DEC 2010). Required in solicitations and contracts exceeding the simplified acquisition threshold.

**52.222-26 Equal Opportunity** (MAR 2007).

**52.222-35 Equal Opportunity for Veterans.** (SEP 2010). This clause applies only if this contract is \$100,000 or more.

**52.222-36 Affirmative Action For Workers With Disabilities** (OCT 2010). This clause applies only if this contract exceeds \$15,000.

**52.222-40 Notification of Employee Rights Under the National Labor Relations Act.** (DEC 2010).

**52.222-50 Combating Trafficking in Persons** (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

**52.244-6 Subcontracts for Commercial Items** (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

**52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels** (FEB 2006). This clause does not apply if this contract is for the acquisition of commercial items unless (i) this contract is a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) items the Seller is reselling or distributing to the Government without

adding value (generally, the Seller does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

**252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (10 U. S. C. 2533b) .**

**252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Pub. L. 110-329, Division E, Section 108). .**

**252.237-7010 Prohibition On Interrogation Of Detainees By Contractor Personnel (NOV 2010).** This clause applies if the contract requires Seller's personnel to interact with detainees in the course of their duties.

**252.246-7003 Notification of Potential Safety Issues. .**

**252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631). .**

**252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631). .**

**252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (NOV 2010).** The first sentence of this clause is deleted and replaced by the following in lieu thereof: In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items clause of this contract (Federal Acquisition Regulation 52.244-6), the terms of the following clauses apply to Contractor and Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

#### **4. Cost Accounting Standards**

**5. AFFARS Clauses** The following contract clauses are incorporated by reference from the Air Force Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" means Seller.

**5352.204-9000 Notification of Government Security Activity and Visitor Group Security Agreements (APR 2003).**

(In this clause, "contractor" means Seller.)

This contract contains a [DD Form 254](#), DOD Contract Security Classification Specification, and requires performance at a government location in the U.S. or overseas. Prior to beginning operations involving classified information on an installation identified on the [DD Form 254](#), the contractor shall take the following actions:

(a) At least thirty days prior to beginning operations, notify the security police activity shown in the distribution block of the [DD Form 254](#) as to:

- (1) The name, address, and telephone number of this contract company's representative and designated alternate in the U.S. or overseas area, as appropriate;
- (2) The contract number and military contracting command;
- (3) The highest classification category of defense information to which contractor employees will have access;
- (4) The Air Force installations in the U.S. (in overseas areas, identify only the APO number(s)) where the contract work will be performed;
- (5) The date contractor operations will begin on base in the U.S. or in the overseas area;
- (6) The estimated completion date of operations on base in the U.S. or in the overseas area; and,
- (7) Any changes to information previously provided under this clause.

This requirement is in addition to visit request procedures contained in [DOD 5220.22-M](#), National Industrial Security Program Operating Manual.

(b) Prior to beginning operations involving classified information on an installation identified on the [DD Form 254](#) where the contractor is not required to have a facility security clearance, the contractor shall enter into a Visitor Group Security Agreement (or understanding) with the installation commander to ensure that the contractor's security procedures are properly integrated with those of the installation. As a minimum, the agreement shall identify the security actions that will be performed:

- (1) By the installation for the contractor, such as providing storage and classified reproduction facilities, guard services, security forms, security inspections under [DOD 5220.22-M](#), classified mail services, security badges, visitor control, and investigating security incidents; and
- (2) Jointly by the contractor and the installation, such as packaging and addressing classified transmittals, security checks, internal security controls, and implementing emergency procedures to protect classified material.

**5352.242-9000 Contractor Access to Air Force Installations** (AUG 2007).

(This clause applies only if Seller will require access to an Air Force installation. Seller's written request for access to an Air Force installation shall be submitted through Buyer.)

(a) The contractor shall obtain base identification and vehicle passes, if required, for all contractor personnel who make frequent visits to or perform work on the Air Force installation(s) cited in the contract. Contractor personnel are required to wear or prominently display installation identification badges or contractor-furnished, contractor identification badges while visiting or performing work on the installation.

(b) The contractor shall submit a written request on company letterhead to the contracting officer listing the following: contract number, location of work site, start and stop dates, and names of employees and subcontractor employees needing access to the base. The letter will also specify the individual(s) authorized to sign for a request for base identification credentials or vehicle passes. The contracting officer will endorse the request and forward it to the issuing base pass and registration office or security police for processing. When reporting to the registration office, the authorized contractor individual(s) should provide a valid driver's license, current vehicle registration, valid vehicle insurance certificate, and Contract letter to obtain a vehicle pass.

(c) During performance of the contract, the contractor shall be responsible for obtaining required identification for newly assigned personnel and for prompt return of credentials and vehicle passes for any employee who no longer requires access to the work site.

(d) When work under this contract requires unescorted entry to controlled or restricted areas, the contractor shall comply with base directives.

(e) Upon completion or termination of the contract or expiration of the identification passes, the prime contractor shall ensure that all base identification passes issued to employees and subcontractor employees are returned to the issuing office.

(f) Failure to comply with this requirement may result in withholding of final payment.

**6. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order**ESC-H16 Foreign Disclosure Guidance** (MAR 2001).

1. The approving agency for applicable technical data export under this contract is the designated United States Air Force Foreign Disclosure Policy Officer (FDPO), specifically Electronic Systems Center INF-B, Tinker AFB INFB, Robins AFB INF-B or its designee. Technical data shall be prepared in accordance with the Statement of Work of this contract and may be subject to the Export Administration Act of 1979 (50 USC App. 2401-2420) and the Arms Export Control Act (22 USC 2751, et seq.) and the international Traffic in Arms Regulation (22 CFR, Subchapter M, 120-et seq.). Seller shall submit all such data to Buyer, who will forward it to the USAF FDPO. For purposes of this contract, timely delivery of such data to foreign addressees is contingent upon export authorization by the USAF FDPO.

2. If the USAF FDPO does not approve export of applicable data that has been prepared in accordance with this contract, Seller may be entitled to an equitable adjustment in this contract.

**ESC-H29 Government/NATO Data Rights Marking Legend** (DEC 2011). Data is required to be delivered to NATO under the terms of this contract for the Cooperative NATO/US CNS/ATM DRAGON EMD Program. DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA - NONCOMMERCIAL ITEMS (Nov 1995), paragraphs (f)(2) through (f)(4) requires that all data developed under this contract and required to be delivered to the Government with less than unlimited rights be marked with a "Data Rights Legend". The "Data Rights Legend" required by DFARS 252.227-7013 for data required to be delivered to NATO under this contract is changed from "The Government's Rights" to read "The Government (USG and NATO) Rights."

**ESC-H30 Program Financial Management** (JAN 1995).

(As required by subparagraphs (b)(1) and (b)(2) of this clause, if Seller is a Euro-Canadian subcontractor that is required to submit a copy of its Billing Limitation Table (BLT) forecast to Buyer, Seller shall submit a copy of its BLT forecast to NAPMA concurrent with its submittal to Seller. Except for that requirement, this clause is provided for information purposes only.)

## a. Definitions

- (1) Billing Limitations (BL) means funds required to satisfy the Contractor's anticipated billings in the performance of this contract. BL will be adjusted as appropriate to pay all allowable and allocable costs in accordance with the contract clause entitled "Progress Payments" and the provisions of this clause. The Billing Limitation Tables shall define the extent of NAPMA's capability to make payments. The BL shown in Table 1 and 3 represents the funds available in national currencies available for all payments during the periods represented in Table 1 and 3.



- (2) Termination Liability (TL) shall be determined in accordance with FAR Clause 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). Estimated TL is shown in Table 2 and 4, which includes amounts disbursed to the Contractor. Tables 2 and 4 may be revised concurrently with updates of BL pursuant to paragraph b. and c. below.

b. Billing Limitations (BL)

- (1) NAPMO will obtain funds and funding commitments from the participating nations sufficient to meet the BL requirement contained in Tables 1 and 3 and sum of all subsequent Billing Limitation Tables (BLT) submitted in accordance with this Special Contract Requirement. Since funding for NAPMO contracts is planned in the participating National Capitals at least one year in advance of need, it is the Contractor's responsibility to ensure that BLT provide the best possible estimates of anticipated billings. In the event that NAPMO is unable to make timely payments caused by accelerated performance of the Contractor which exceeds the current year's contract cumulative BLT, the Contractor agrees to continue performance and to accept compensation as specified in ESC-H32, "Deferred Payments." The Contractor's forecasts shall be for the periods JAN-APR, MAY-AUG, and SEP-DEC. The Contractor shall require Euro-Canadian subcontractors to submit a copy of their respective BLT forecast to NAPMA concurrent with their submittal to the Contractor. This copy will be used for information and planning purposes only by NAPMA.
- (2) To ensure maximum alignment between the Euro-Canadian subcontractors' BLT/ Termination Liability Tables (TLT) forecast and the NAPMO funding, the Contractor shall allow NAPMA direct involvement in the establishment of these BLT/TL forecasts. This involvement shall only pertain to establishment of the said forecasts and shall in no way interfere with the Contractor subcontractor management. NAPMA shall provide timely notification to the Contractor of any planned communications with the Euro-Canadian subcontractors to allow Contractor participation and will make best efforts to schedule such communications/meetings to coincide with Contractor planned program reviews/meetings at the subcontractors' facilities. The Contractor shall require Euro-Canadian subcontractors to submit a copy of the agreed to BLT forecast to NAPMA concurrent with their submittal to the Contractor.
- (3) Changes in the BLT/TLT proposed by the Contractor shall be submitted 120 days in advance of the BLT period affected in accordance with CDRL requirements (CFSR). Negotiation of the BLT will be concluded within 30 days. If agreement is not reached within 30 days, the on-contract BLT will continue to be in effect. The Contracting Officer shall issue a contract modification which establishes revised BLT/TL within 30 days of agreement on BLTs.
- (4) If the Contractor is requested to submit a proposal for a contract change not covered by paragraph c. of this requirement, it shall include stand-alone BL/TL tables for that project with its proposal. These tables will be updated to reflect negotiated prices and will be added to this requirement as stand-alone tables. Subsequent revisions will be described in paragraph b(1).

c. Change Orders. Prior to issuing a Change Order under the "Changes" clause, or a Contract Modification of any value, the Contracting Officer shall request the Contractor to propose BL/TL values for the contemplated change. The Contracting Officer shall include BL/TL values in Tables 1/2 format in the Change Order or Contract Modification. Change Order/Contract Modification BL/TL values are subject to adjustment in accordance with this clause. Upon definitization or award of the Change Order, the BL/TL values will be incorporated into approved Tables 1 and 2. Nothing herein shall prohibit the Contractor from including change order and basic contract billings in a single invoice, with an attached breakout.

d. Currency Exchange Rates. Exchange rate variations shall not affect the values of this contract. For the purpose of administration of this contract, national currencies shall be shown separately as well as converted into equivalent U.S. dollars at the exchange rates stated in ESC-H33, "CURRENCY CONVERSION FOR EURO-CANADIAN SUBCONTRACTORS." The resultant values shall be totaled in the "EQUIVALENT DOLLAR" column of Tables 1 through 4.

e. The Contractor agrees to continue performance under conditions of insufficient BL/TL, and agrees to accept compensation as defined under ESC-H32, "DEFERRED PAYMENTS", for insufficient BL/TL under those specified conditions.

f. The Contractor shall support Financial Management Reviews involving SPO/NAPMA financial and contract managers to review CNS/ATM EMD information, such as funding status.

g. The financial data described above will be delivered in accordance with the Contract Data Requirements List (CDRL), "Contract Funds Status Report".

- h. The financial data described above will be provided as Attachment 13 to the contract.

**ESC-H31 Payments (JAN 1995).**

(Paragraph b of this clause describes a payment process for "Clearing House Subcontractors." That process applies only to Euro-Canadian first tier subcontractors and to those second tier subcontractors that have a different currency than the first tier subcontractors they work for).

a. U.S. Dollar Payments to the Prime Contractor

- (1) Progress Payments shall be paid monthly pursuant to FAR Clause 52.232-16, "PROGRESS PAYMENTS" up to the cumulative equivalent U.S. Dollar amounts specified in the Billing Limitation Table (BLT) on contract for each calendar year. Requirements for payments beyond the amounts indicated on the Billing Limitation Table on contract for the U.S. Dollars are subject to the provisions of ESC-H32, "DEFERRED PAYMENTS" and ESC-H30, "PROGRAM FINANCIAL MANAGEMENT".
- (2) All invoices, once certified by DCMA (for progress payments, Certificates of Conformance/ Completion invoices, DD Form 250 invoices, invoices for fixed-price items or other invoices), shall be submitted concurrently to NAPMA, ESC/HBSF-N, and to DFAS-CO/ DCMD West for payment.

b. First and second tier subcontractors performing under this contract with currencies different than their direct principal should fall under the procedures of the Clearing House Process in order to reduce the exchange rate fluctuation risk for the prime contractor and the subcontractors.

(Note: This process applies only to Euro-Canadian first tier subcontractors and to those second tier subcontractors that have a different currency than the first tier subcontractors they work for). The following procedures apply to these "Clearing House Subcontractors".

- (1) Clearing House subcontracts will be priced and all invoices for payment will be in the first or second tier subcontractor's national currency. Clearing House subcontractors will be paid in their national currency by NAPMA. Requirements for payments beyond the amounts indicated on the BLT for the Euro-Canadian and U.S. currencies are subject to the provisions of ESC-H30, "PROGRAM FINANCIAL MANAGEMENT".
- (2) Payments to Clearing House subcontractors may be based on the completion of contract milestones or progress payments.
- (3) When a second tier Euro-Canadian or U.S. subcontractor has completed a contract milestone or can submit a progress payment request in accordance with its contract, the second tier subcontractor will submit an invoice or progress payment request to the first tier subcontractor, who will verify that the invoice/progress payment request is consistent with the requirements of the subcontract.
- (4) When a first tier subcontractor has completed a contract milestone or can submit a progress payment request in accordance with its contract, the first tier subcontractor will submit an invoice or progress payment request to the National Government Representative. The invoice must contain:
  - (A) The amount of the invoice in first and second tier subcontractor currency(s)
  - (B) The total price of the subcontract broken out by currency for both the first tier subcontract and the second tier subcontract, i.e. separate prices
  - (C) The cumulative amount invoiced to date by currency for both subcontracts
- (5) The National Government Representative will certify that the first tier Euro-Canadian subcontractor has met the milestone completion requirements or that the first tier Euro-Canadian subcontractor is authorized to submit a progress payment request, and that the invoiced amount is correct. After validation by the National Government Representative, the first tier Euro-Canadian subcontractor will forward the invoice/progress payment request to the Prime Contractor.
- (6) Upon receipt of an invoice/progress payment request from a first tier subcontractor, the Prime Contractor shall verify that the invoice/progress payment request is consistent with the requirements of the contract and that the request

for payment, both in first and second tier subcontractor's national currency, does not exceed the CNS/ATM Billing Limitation Table amount by currency. If the invoice/progress payment request exceeds the Billing Limitation Table amount, the Prime Contractor shall notify the NAPMA Financial Controller and the Contracting Officer, and the provisions of ESC-H32, "DEFERRED PAYMENTS" shall apply. The Prime Contractor shall convert the amount of the invoice/progress payment request from the national currency of the first and second tier subcontractor to U.S. dollars based on the currency exchange rates specified in ESC-H33, "CURRENCY CONVERSION FOR EURO-CANADIAN SUBCONTRACTORS".

- (7) The Prime Contractor shall forward by facsimile a copy of the invoice/progress payment request to the NAPMA Financial Controller (with an information copy to the ESC Financial Management Office ESC/HBSF) and shall forward to NAPMA payment in U.S. dollars equivalent to the converted amounts of the invoice/progress payment request. This payment shall be made to the NAPMA Programme Investment Account Number 200.001.066.7703 at the Wells Fargo Bank, NA, Global Government Banking Group, 1300 I Street, N.W., 11th Floor, Washington, DC 200005, ABA/Routing Number: 054.001.220. The Prime Contractor shall forward the original certified first tier Euro-Canadian subcontractor invoice/progress payment request to the NAPMA Financial Controller for filing with the actual payment records.
- (8) Following receipt of the facsimile invoice/progress payment request and payment in U.S. dollars from the Prime Contractor, NAPMA will initiate direct payment to the Clearing House subcontractor. However, in accordance with NAPMA Financial Regulations, final payment will not be made to vendors until original certified invoices/progress payment requests have been received by NAPMA. Certified invoices are required for the first tier subcontracts only.
- (9) The normal process for NAPMA will be to initiate payment of Euro-Canadian and U.S. dollar invoices/progress payment requests once per month on the day specified in the mutually agreed payment schedule for the current year. All properly certified invoice(s) received at least six working days prior to that date will be included in the applicable month's payment process, if payment in U.S. dollars from the Prime Contractor has been received in the NAPMA accounts. In accordance with NAPMA Financial Regulations, original certified invoices must be received before final payment may be made. NAPMA will notify the Prime Contractor by facsimile when payments have been executed. Such notice will include first and second tier subcontractor's name, invoice number(s), amount(s) paid, and date payment is initiated.
- (10) NAPMA and the Prime Contractor will compose a mutually agreed to payment schedule for each subsequent year, considering the NAPMA holiday schedule.
- (11) In the event NAPMA fails to pay Clearing House Subcontractors' invoices/progress payment requests as contemplated by paragraph b. of this clause, the Contractor shall notify NAPMA within five (5) calendar days of becoming aware of such event. Such notification shall identify the invoices payment requests, which have not been paid and shall state the monetary value of said invoices payment requests. The contract price shall be reasonably and equitably adjusted for all damages or costs incurred, including costs associated with any subcontractor claims, suits, actions, liabilities, and damages, occasioned by failure of NAPMA to pay Clearing House subcontractors' invoices as contemplated by paragraph b. of this clause.
- (12) The Prime Contractor and NAPMA will electronically transfer funds as specified in the agreed to payment schedule. The Prime Contractor's and NAPMA's responsibility for each electronic funds transfer ceases upon initiating the electronic funds transfer and is not dependent upon receipt of funds by payee's and recipient's bank. In the event the Prime Contractor does not initiate the electronic funds transfer on the specified date, NAPMA may delay its payment one day for each day of delay of the Prime Contractor's initiation of the electronic funds transfer.

c. If currency required for payment above is not available, ESC-H32, "DEFERRED PAYMENTS," may be exercised by the parties.

#### **ESC-H32 Deferred Payments (JAN 1995).**

(This clause has been included in the CCR for information purposes only.)

- a. Changes in Billing Limitation Tables (BLT) proposed by the Contractor, including changes to the currency mix which do not affect the cumulative budget year totals, must be submitted 120 days in advance of the BL period affected in order for the Contractor to be eligible for interest on deferred payments. In the event sufficient NAPMO funds are not available to assure timely Government

payments to the Contractor due to NAPMO's inability to obtain funds to cover contractual cumulative Billing Limitations in accordance with ESC-H30, "PROGRAM FINANCIAL MANAGEMENT", payment of interest is authorized. This applies equally to certified invoices/progress payments against BL adjustments requested 120 days in advance of the BL period affected, but not modified by the Contracting Officer due to inability to reach agreement within the negotiation period (reference ESC-H30, "PROGRAM FINANCIAL MANAGEMENT," paragraph b (1)). The Contractor must accept payment of interest on overdue amounts in consideration of deferred payment and continued contract performance.

b. In the event sufficient NAPMO funds are not available to assure timely Government payments due to Contractor notification of a change to the BL in less than 120 days, the Contractor shall continue performance and accept deferred payments without interest. NAPMO will exert all reasonable effort to make progress payments/pay invoices out of existing resources, and to obtain additional funds when necessary.

c. In the event an adjustment to the BLT is required due to phasing of requirements within the budget year which do not affect the cumulative budget year total, no deferred payments will be necessary.

d. Interest will be computed and paid subject to the following:

(1) Unpaid amounts of a (any) voucher(s) that have been submitted and Government approved pursuant to the payment provisions of this contract shall be used as a base to compute the daily finance charge. Such charge will accumulate daily on the unpaid amounts from the first USG working day following the date the payment is due to the contractor.

(2) The daily interest shall be computed by dividing the Treasury rate plus 2 percent by 360. The Treasury Rate is defined as results of the most recent auction of 13-week U.S. Government treasury bills sold at discount from face value. "Most Recent" is defined as the 13-week rate published in the Wall Street Journal on the first USG working day following the date the payment is due to the contractor.

(3) Authorization to pay specific interest to the Contractor will be set forth in a contract modification(s) issued by the Contracting Officer. After a deferral of payment(s) under this provision, when NAPMO funds next become available, payments of outstanding vouchers will resume with the oldest outstanding voucher and will be paid to the extent of the availability of such funds.

e. To permit the Contractor to plan for any needs to finance unpaid vouchers, the Contracting Officer will provide the Contractor an estimate of any anticipated funding shortages as early as possible.

**ESC-H33 Currency Conversion for Euro-Canadian Subcontractors (JAN 1995).**

(This clause has been included in the CCR for information purposes only.)

a. This requirement, in combination with ESC-H31,"PAYMENTS"and ESC-H30,"PROGRAM FINANCIAL MANAGEMENT" will protect the Prime Contractor and subcontractors from financial loss or gain due to currency exchange rate fluctuations.

b. The Contractor shall provide forecasts of the required currencies for CNS/ATM EMD in accordance with the BL/TL tables. Reports shall also state the actual currency amounts, which were invoiced to NAPMA for payment in all prior periods.

c. The face amount of this contract will administratively cite the mix of participating nation currencies required for contract total performance. The face value (AFMC Form 701, Blk 22) will also be expressed in total equivalent United States dollars (hereafter called Equivalent Dollars) for purpose of determining total price using the appropriate fixed rates of exchange expressed below. The following fixed rates of exchange that were published in the Wall Street Journal of 8 July 2010 apply to the CLINs of this contract:

Country	Currency	Per US\$
Canada	Dollar	1.0440
Denmark	Krone	5.8720
Norway	Krone	6.3694
Turkey	Lira	1.5494
UK	Pound	0.6597
Belgium/Lux	Euro	0.7879
Germany	Euro	0.7879
Greece	Euro	0.7879
Italy	Euro	0.7879

Netherlands	Euro	0.7879
Portugal	Euro	0.7879
Spain	Euro	0.7879
Hungary	Forint	220.6500
Poland	Zloty	3.2165
Romania	Leu	3.3328
Czech Republic	Koruna	20.0320

d. Changes in the national currency mix shall not change the equivalent U.S. dollar value of the projects.

e. The Contractor is responsible for the selection of all subcontractors including Euro-Canadian subcontractors. The contractor shall employ competitive practices whenever possible in the selection of subcontractors and suppliers. The evaluation of Euro-Canadian firms whether on a competitive basis with each other, with US firms or as part of a make/buy analysis shall be based on currency exchange rates as described below. These procedures apply to all selections/evaluations of first tier Euro-Canadian subcontractors as defined in ESC-H40, "EURO-CANADIAN SUBCONTRACTING," subparagraph a (4).

f. Price evaluation of Euro-Canadian subcontractors for Boeing Make/Buy decisions shall be based on exchange rates in effect on the closing date of the bid. These exchange rates shall be defined as the Spot Rate published in the Wall Street Journal on the closing date of the bid for the respective national currencies. This rate shall be project/supplier specific and shall also apply to any changes to subcontracts for such specific suppliers/projects within the scope of the subcontract. It shall not apply to subsequent Future Work with the selected subcontractor. Future work is defined as outside the scope of this contract or the applicable subcontract.

g. Price evaluation of Euro-Canadian subcontractors for Future Work and Boeing Make/Buy decisions after the award of this contract shall be based upon the current exchange rate. The current exchange rate shall be defined as the Spot Rate published in the Wall Street Journal on the closing date of the bid/proposal from such first tier Euro-Canadian subcontractors for the respective national currencies.

h. If the Contractor chooses a Euro-Canadian subcontractor for Future Work, having a value equal to or greater than \$100,000.00 Equivalent Dollars resulting from a Class I change to the prime contract before TBD, or a Class II change to the prime contract resulting from a Class I change to a subcontract having a value equal to or greater than \$100,000.00 Equivalent Dollars on or after TBD, the applicable BL/TL tables shall be revised to identify the Future Work and to add the currency exchange for the selected subcontractor's national currency for this Future Work. This shall be reflected as a separate column in the BL/TL tables. If the Euro-Canadian subcontractor is selected through competitive bidding procedures, the currency exchange rate shall be the Spot Rate published in the Wall Street Journal on the date of bid closure. If the Euro-Canadian subcontractor is selected as a sole source, the currency exchange rate shall be the Spot Rate published in the Wall Street Journal on the date of the proposal. The applicable contract currency exchange rate noted in paragraph (c) above will apply for all Class II changes and for Class I changes not meeting the \$100,000.00 threshold. As of Date To Be Filled In Prior To Award, the applicable spot exchange rate, as described above in this paragraph, shall apply to any Class II change to the prime contract resulting from a Class I change to the subcontract in having a value equal to or greater than \$100,000.00 Equivalent Dollars.

**ESC-H34 Rights of Participating NATO Governments to Audit Reports** (JAN 1995). Seller agrees that the NATO AE&WC Programme Management Organization (NAPMO) may receive from the Contracting Officer reports of audit of Seller and subcontractors derived pursuant to clause titled "Audit and Records – Negotiation." Seller shall identify proprietary or sensitive data and/or information in source documentation for the aforementioned audit reports. The Contracting Officer shall delete this proprietary or sensitive data prior to release to NAPMO and governments participating in the joint cooperative CNS/ATM - DRAGON EMD Program. This clause shall be included in all subcontracts.

**ESC-H39 Recovery of NAPMA's Pro-Rata Share of Nonrecurring Costs on Foreign Commercial Sales** (DEC 2011).  
(In this clause, "Contractor" means Seller.)

a. In the event the Contractor or its subcontractors, intends to enter into future sales or license agreements for the items and data developed under this contract or essentially similar items (essentially similar is characterized as 75% identical to the items delivered on technological and systems parts/components), it shall promptly notify the Contracting Officer. The Contractor agrees that he will collect from the customer of a future sale an amount or amounts calculated in accordance with subparagraph (2) below to reimburse the NAPMO for a pro rata share of its expenditures for nonrecurring costs applicable to the items. The NAPMO will receive recoupment of any amount or amounts due from the Contractor through electronic transfer of funds payment between NAPMA and the Contractor.

(1) Non-recurring costs include such costs as research and development, test, evaluation, pre-production, facilities, special tooling, special test equipment, production engineering, product improvement, destructive testing and pilot model production, testing and evaluation.

(2) For each future sale or license agreement the amount to be reimbursed to the NAPMO for the NAPMO non-recurring costs shall be determined by dividing the total NATO portion of the non-recurring CNS/ATM EMD contract price by the total production quantity of the item, past and projected, including the production quantity for the NAPMO and multiplying the results by the quantity involved in each such sale or license agreement. That per item costs will be multiplied by the new sale quantity to obtain the reimbursement amount to NAPMA. There is no cap to the recoupment NAPMA may recover under this provision. The following is a notional example of a recoupment:

1. NAPMA development costs: €50,000 over 6 items = €8,333 per item paid.
2. New sale of 4 items: 6 item (original NAPMA procurement)

4 new items

10 total items sold

- €50,000 : 10 = €5,000 per new item  
 New sale: 4 x €5,000 = €20,000  
 To be reimbursed to NAPMA from sales: = €20,000 to NAPMA
3. Subsequent sale of 15 items: 4 item (original NAPMA procurement)

6 items (1st sale)

15 new items (2nd sale)

25 total items sold

- €50,000 / 25 = €2,000 per new item  
 New sale 15 X €2,000 = €30,000  
 To be reimbursed to NAPMA from sales: = €30,000 to NAPMA

b. The Contractor agrees that his rights to enter into production for future sales of the items or essentially similar items are expressly contingent upon compliance with the provisions of this clause.

c. The Contractor further agrees to flow-down this clause, substantially as written, in all CNS/ATM EMD subcontracts. The recoupment requirement shall also be applicable for future sales by subcontractors. The Contractor's obligations will be limited to reporting to the NAPMO such foreign commercial sales or license agreements that applicable subcontracts enter into. The NAPMO will be responsible for recoupment of any amount or amounts due directly from such subcontractors.

**ESC-H43 Most Favored Customer** (DEC 2011).

(In this clause, "Contractor" means Seller. In the first sentence, add the words "that would be" after "will not be less favorable than the prices.")

The parties agree that the prices proposed by the Contractor for the NATO unique CLINs will not be less favorable than the prices proposed to the U.S. Government as if the U.S. Government were purchasing the same supplies and services for its domestic purposes. The Contractor attests that additional costs that the Contractor may otherwise charge to Foreign military customers with the Government are not included in the contract price.

**ESC-H46 Special Provision Under Paragraph (d) of 52.229-6 Taxes - Foreign Fixed-Price Contracts** (AUG 2010).

(This clause applies only if the taxes and customs described in this clause would otherwise apply.)

a. This contract contains no provision or costs for customs or duties imposed by countries listed in paragraph (c) of ESC-H33, "Currency Conversion for Euro-Canadian Subcontractors", for items required to be delivered to NATO under this contract. In the event a foreign Government imposes such customs, duties, or similar charges, Contractor incurred costs are reimbursable to the Contractor. Reimbursement shall be limited to those Contractor incurred costs, including applicable overhead and G&A expenses, but excluding profit. The contract price will be adjusted accordingly.

b. The NAPMO, acting on behalf of NATO, shall enjoy the privileges of exemption from taxes, customs, duties, and quantitative restrictions on imports and exports in respect of any item or aspect of the programs as set out in Articles IX and X of the Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff (Ottawa, 20 September 1951). Identifiable taxes, customs, duties, or other charges levied by any participating nation in connection with the activities covered by this arrangement will be borne by the Government of the participating nation, either directly or by waiver or by an appropriate increase of that participating nation's contribution.

c. The Contractor is informed of these exemptions and agrees not to incorporate any taxes or customs duties in its price, or otherwise charge the NAPMO for taxes or customs duties. The Contractor is responsible for obtaining and preparing any documentation required by NATO and by tax, duty, or customs authorities to effect the exemptions for the items and services to be delivered. Any circumstances that prevent the Contractor from implementing the aforementioned exemptions will be reported to NAPMA

immediately.

d. Taxes levied by non-participating nations and not waived by them will be borne by NAPMO.

e. This clause shall be inserted verbatim in all subcontracts and purchase orders awarded by the Contractor in all cases where such taxes and customs would otherwise apply.

**5352.242-9000 Contractor Access to Air Force Installations (AUG 2007).**

(This clause applies only if Seller will require access to an Air Force installation. Seller's written request for access to an Air Force installation shall be submitted through Buyer.)

(a) The contractor shall obtain base identification and vehicle passes, if required, for all contractor personnel who make frequent visits to or perform work on the Air Force installation(s) cited in the contract. Contractor personnel are required to wear or prominently display installation identification badges or contractor-furnished, contractor identification badges while visiting or performing work on the installation.

(b) The contractor shall submit a written request on company letterhead to the contracting officer listing the following: contract number, location of work site, start and stop dates, and names of employees and subcontractor employees needing access to the base. The letter will also specify the individual(s) authorized to sign for a request for base identification credentials or vehicle passes. The contracting officer will endorse the request and forward it to the issuing base pass and registration office or security police for processing. When reporting to the registration office, the authorized contractor individual(s) should provide a valid driver's license, current vehicle registration, valid vehicle insurance certificate, and Contract letter to obtain a vehicle pass.

(c) During performance of the contract, the contractor shall be responsible for obtaining required identification for newly assigned personnel and for prompt return of credentials and vehicle passes for any employee who no longer requires access to the work site.

(d) When work under this contract requires unescorted entry to controlled or restricted areas, the contractor shall comply with base directives.

(e) Upon completion or termination of the contract or expiration of the identification passes, the prime contractor shall ensure that all base identification passes issued to employees and subcontractor employees are returned to the issuing office.

(f) Failure to comply with this requirement may result in withholding of final payment.

**ESC-H09 Access to Government Installations (MAR 2001).**

(This clause applies if Seller will be working at a Government installation. In this clause, "Contractor" means Seller.)

1. Prior to commencing work under the terms of a delivery order, the Contractor shall contact the security or military police and/or the sponsoring organization at the installation responsible for each installation where the work is required under that delivery order and obtain all necessary passes/access badges for persons employed by him who will require access to the installation. Employees without passes who enter the worksite for any reason will be subject to such actions and fines as described in the local security regulations and procedures.

2. The Contractor agrees to abide by all regulations and procedures as stipulated by the security or military police concerned and to surrender all passes issued to him in accordance with the installation procedures.

**ESC-H12 Special Distribution Instructions (MAR 2001).**

(This clause applies only if Seller will ship items produced under this contract directly to the Government.)

Distribution. Material Inspection and Receiving Report (MIRR) (DD Form 250) covering AFMC provision items shall be in accordance with, and limited to, the distribution and quantities as provided in Table 1 (Standard Distribution) and Table 2 (Special Distribution of DoD FAR Supplement Appendix F-401. Address of special distribution recipient of the MIRR which is not specified in DoD FAR Supplement Appendix F-401, Table 2 is as follows:

Special Distribution (DD250)  
OC-ALC/LAKM  
Tinker AFB, OK 73145-5609

**ESC-H26 Government/NATO Software Rights Marking Legend (DEC 2011).** Software is required to be delivered to NATO under the terms of this contract for the Cooperative NATO/US CNS/ATM DRAGON EMD Program. DFARS 252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUN 1995), paragraphs (f)(2)

through (f)(4) requires that all software developed under this contract and required to be delivered to the Government with less than unlimited rights be marked with a "Software Rights Legend". The "Software Rights Legend" required by DFARS 252.227-7014 for software required to be delivered to NATO under this contract is changed from "The Government's Rights" to read "The Government (USG and NATO) Rights."

**ESC-H40 Euro Canadian Subcontracting** (DEC 2011).

(This clause applies only if Seller is a Euro-Canadian subcontractor. In this clause, "Contractor means Seller. In paragraph f (4), add "though Buyer's Authorized Procurement Representative" after "Contracting Officer.")

a. Definitions. For the purposes of this "Euro-Canadian Subcontracting" Special Contract Requirement and the clauses referenced herein, the following definitions shall apply:

(1) Subcontract - Any purchase order, license or other contractual arrangement awarded by the Contractor to industrial firms of contributing nations. These industrial firms will hereinafter be referred to as a Euro-Canadian contractor.

b. None of the provisions hereof shall relieve the Contractor of the need to comply with the International Traffic in Arms Regulation, the National Industrial Security Program Operating Manual, or other laws and regulations governing foreign procurement and disclosure of information to foreign nationals.

c. Subcontract Management - The following shall apply with respect to Euro-Canadian subcontracts:

(1) For the purposes of this clause, Euro-Canadian subcontractors are hereby identified as critical. Award of subcontracts by the Contractor shall not in any way interfere with the Contracting Officer's right to review, and consent to, all critical subcontracts prior to award of definitive instruments.

(2) The Contracting Officer reserves the right to review and consent to all critical subcontracts prior to award of definitive instruments. Consent by the Contracting Officer to any critical subcontract or any provisions thereof shall not be construed to be a determination of the acceptability of any critical subcontract price or of any amount paid under any critical subcontract or to relieve the Contractor of any responsibility for performing this contract, and performance of the CNS/ATM system, unless such consent specifically provides otherwise.

(3) It is contemplated that the Contracting Officer's review of Euro-Canadian subcontracts may include participation by the NAPMO staff and representatives of the respective host government as well as the particular Euro-Canadian subcontractor in order to assure full understanding by all of the above of the terms, conditions, special requirements and contract administration arrangements which pertain to this contract. The review will include:

(i) Flow down of all special contract requirements and contract clauses in accordance with paragraph d. of this Special Contract Requirement.

(ii) Verification that the Euro-Canadian subcontract has been priced in accordance with national pricing regulations as defined by the applicable National Audit Authority.

(iii) Verification that the audit findings of the applicable National Audit Authority have been utilized in the negotiated agreement for each subcontract.

(iv) Any delay of award of any subcontract by the Contracting Officer that affects the prime delivery schedule may result in an equitable adjustment to the contract price and/or delivery schedule.

(4) RESERVED

(5) Except as modified in paragraph c (1) above, the Contractor shall notify the Contracting Officer reasonably in advance of entering into each critical subcontract. The advance notification shall comply with the requirements of FAR Clause 52.244-2 SUBCONTRACTS (FIXED-PRICE CONTRACTS), paragraph (c).

d. Contract clauses requiring flow down to subcontractors shall be flowed down to Euro-Canadian subcontractors unless exempted by the provisions of this clause or by the FAR instructions regarding applicability of the clause. Unless specifically exempted in e. below, all contract clauses of this prime contract shall be applicable to Euro- Canadian subcontractors to the same extent as these General Provisions will apply to U.S. subcontractors, with the following exceptions/modifications:

(1) Quality Assurance - Quality Assurance requirements for Euro-Canadian Subcontractors are addressed in the CNS/ATM-DRAGON EMD Program Statement of Work ( SOW).



(2) Examination of Records by the Comptroller General - In the provision to be included in subcontracts, as required by subparagraph (c) of the clause, the term "Comptroller General of the United States or any of his duly authorized representatives" shall be replaced by the term "National Audit Authority of the respective Euro-Canadian nation or its duly authorized representative".

(3) Audit-Negotiation - The requirement in (b) of the clause shall, for Euro-Canadian subcontracts, be applied with the term "Contracting Officer or his representatives (who are employees of the United States Government)" replaced by "National Audit Authority or in exceptional circumstances, the USG DCAA".

(4) Filing of Patent Applications - Classified Subject Matter - Applications may be filed with the host nation.

(5) Restrictive Markings on Technical Data - The Contractor will assure that the intent of this clause is satisfied by Euro-Canadian subcontractors.

e. Application of the following prime contract clauses to Euro-Canadian subcontractors is not required:

52-219-8 Utilization of Small Business Concerns

52.222-20 Walsh-Healey Public Contracts Act

52.222-26 Equal Opportunity

52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era

52.223-2 Clean Air and Water

52.223-3 Convict Labor

52.230-2 Cost Accounting Standards

52.230-3 Disclosure and Consistency of Cost Accounting Practices

52.230-6 Administration of Cost Accounting Standards

52.232-36 Affirmative Action for Workers with Disabilities

252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program)

252.227-7037 Validation of Restrictive Markings on Technical Data

252.247-7023 Transportation of Supplies by Sea

252.247-7024 Notification of Transportation of Supplies by Sea

f. Pricing and Audit

(1) Pricing of Euro-Canadian subcontractor proposals shall be in accordance with the pricing instructions of this contract; however, the allowability and allocability of Euro-Canadian subcontractor costs including termination costs shall be in accordance with national pricing policies applicable as if the subcontractor's government issued the contract for defense purposes, regardless of whether or not such costs would be allowable under a U.S. Government contract. Allowability pursuant to non-U.S. laws shall be determined between the Contracting Officer and the appropriate National Audit Authority.

(2) In order to assure a proper audit trail of cost or pricing data to the prime contract level and to meet the requirements normally satisfied by subcontractor submission of SF Forms 1411, the Contractor shall require that all Euro-Canadian subcontractor price proposals substantially meet the FAR Part 15 standards.

(a) Euro-Canadian subcontractor price proposals will provide detailed cost information with supporting information, adequately cross-referenced, suitable for detailed analysis. A supporting breakdown must be furnished for each cost element, consistent with the offeror's accounting system.

(b) Depending on the offeror's system, cost support shall be provided for the following basic elements of cost, as applicable:

(i) Materials - Provide a consolidated priced summary of individual material quantities included in the various tasks, orders or contract line items being proposed, and basis for pricing (vendor quotes, prices, etc.).

(A) Subcontracted Items - Include parts, components, assemblies and services to be produced or performed by other than the subcontractor in accordance with the contracted design, specifications or directions and applicable only to the prime contract. For each subcontract over \$100,000.00, the support should provide a listing by source, item, quantity, price, type of subcontract, degree of competition and basis of establishing source and reasonableness of price, as well as results of review and evaluation of subcontractor proposals when required.

(B) Standard Commercial items as defined in FAR part 2.101- Means items regularly used in the course of normal business operations for other than Government purposes which:

1. Have been sold or licensed to the general public;

2. Have not been sold or licensed, but have been offered for sale or license to the general public;

3. Are not yet available in the commercial marketplace, but will be available for commercial delivery in a reasonable period of time.

4. Are described in paragraphs 1, 2, or 3 that would require only minor modification in order to meet the requirements of the procuring agency.
- (C) Interorganizational Transfers (at other than cost) - Provide explanation of pricing method used.
- (D) Raw Material - Consists of material which is in a form or state that requires further processing. Provide priced quantities of items required for this proposal.
- (E) Purchased Parts - Include material items not covered above. Provide priced quantities for items required for the proposal.
- (F) Interorganizational Transfers (at cost) - Include separate breakdown of cost by element.
- (ii) Direct Labor - Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category and furnish basis for estimates.
- (iii) Indirect Costs - Indicate the method of computation and application of your indirect costs, including cost breakdowns, and showing trends and budgetary data, to provide a basis for evaluation of the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.
- (iv) Other Costs - List all other costs which are not otherwise included in the categories described above, (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, and spoilage rework) and provide basis for pricing.
- (c) There is a clear distinction between "submitting" cost or pricing data and merely "making available" books, records and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the contractor has been submitted, either actually or by specific identification. As later information comes into the contractor's possession, it should be promptly submitted to the buyer. The requirement for submission of cost or pricing data continues up to the time of final agreement on price.
- (d) The Euro-Canadian subcontractor will grant to the National Audit Authority (see f.(3) below), the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the proposed price. This right may be exercised at any time prior to award to the Euro- Canadian subcontractor.
- (e) The Euro-Canadian subcontractor will submit as soon as practicable after final agreement on price, a Certificate of Current Cost or Pricing Data wherein the Euro-Canadian subcontractor will certify that cost or pricing data as defined above are accurate, current and complete as of the date of agreement on price.

### (3) Audit Authority

- (a) If other than a firm-fixed-price contract is to be awarded to Euro-Canadian subcontractor, the allowability of categories of costs for the purpose of final price determination shall comply with national price regulations. The national pricing regulations may be supplemented by mutual agreement between the Contracting Officer and a representative of the participating government. The Contracting Officer shall advise the Contractor of such action prior to consent to such subcontract by the Contracting Officer.
- (b) Additional detailed guidance on audit arrangements will be provided by the Contracting Officer.

### (4) Requests for Euro-Canadian Subcontractor assist audits will be directed by the Contractor to the Contracting Officer.

#### **ESC-H51 Enabling Clause Between Prime Contractors and Service Contractors - CNS/ATM DRAGON EMD (DEC 2011).**

(This clause applies only if this contract exceeds \$1,000,000. In this clause "Contractor" means Seller. Seller shall include a similar provision in all subcontracts in excess of \$1,000,000, including the requirement to include it in succeeding levels of subcontracts in excess of \$1,000,000.)

- a. In the performance of this contract, the Contractor agrees to cooperate with Quantech Services Incorporated, Jacobs Technology Incorporated, Tecolote Research Incorporated, Change Navigators Inc. and Windmill International by: responding to invitations from authorized personnel to attend meetings; providing access to technical information and research, development and planning data, test data, and results, schedule and milestone data, financial data including the Contractor's cost/schedule management system/records and accounting system, all in original form or reproduced; discussing technical matters related to the program; providing access to Contractor facilities utilized in the performance of this contract; and allowing observation of technical activities by appropriate support Contractor technical personnel.
- b. Service Contractor personnel are not authorized to direct a Contractor or subcontractor in any manner.
- c. Service contracts contain an organizational conflict of interest clause that requires the service Contractors to protect the data and prohibits the service Contractors from using the data for any purpose other than that for which the data was presented.
- d. Neither the Contractor nor its subcontractors shall be required in the satisfaction of the requirements of this clause to perform any effort or supply any documentation not otherwise required by their contract or subcontract.