

CUSTOMER CONTRACT REQUIREMENTS
Next Generation Transparency, Phase 2, 3, 4 and 6
CUSTOMER CONTRACT F33615-97-2-3407

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

1. The following prime contract special provisions apply to this purchase order:

A. INVENTIONS

A. The clause entitled 'Rights to Inventions Made by Nonprofit Organizations and Small Business Firms,' (37 CFR 401) is hereby incorporated by reference and the clauses in paragraph 401.14 are modified as follows: replace the word 'Contractor' with 'Seller,' replace the words 'agency,' 'Federal Agency' and 'funding Federal Agency' with 'government,' delete paragraphs (g)(2), (g)(3) and the words 'to be performed by a small business firm or domestic nonprofit organization' from paragraph (g)(1); paragraph (1), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office identified elsewhere in this agreement.

B. The Seller shall file Invention (Patent) Reports as of the close of the performance year and at the end of the term for this Agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 60 days after the expiration of the final performance period. The Seller shall use DD Form 882, Report of Inventions and Subcontracts, to file an inventions report. Negative reports are also required. The Seller shall submit the original and one copy to the servicing Staff Judge Advocate's office, one copy to the Grants Administration Office, and one copy to the grants officer, if different from the Grants Administration Office.

C. Final payment cannot be made nor can the Contract be closed out until the Seller delivers to the Government all disclosures of subject inventions required by this Agreement, an acceptable final report pursuant to the article entitled 'Final Report,' and all confirmatory instruments.

B. DATA RIGHTS

1. Ownership rights to data and technical data, as defined in 48 CFR 27.401, generated under this agreement shall vest in the Seller.

2. The Seller hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, full paid-up license to use, duplicate, or disclose for governmental purposes any technical data developed under this agreement.

3. The Seller reserves the right to protect by copyright original works developed under this agreement. All such copyrights will be in the name of the Seller. The Seller hereby grants the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this agreement, and to authorize others to do so. The Seller also grants non-exclusive, non-transferable, royalty-free, fully paid-up licenses to project subrecipients to use any copyrighted material developed under this agreement for research purposes as necessary to fulfill the requirements of this agreement.

4. The Seller is responsible for affixing appropriate markings indicating rights on all data and technical data delivered under the agreement. The Government shall be deemed to have unlimited rights in all data, technology and inventions, whether patented or not, made, developed or delivered without markings.

C. FOREIGN ACCESS TO TECHNOLOGY

This article shall remain in effect during the term of the contract and for 5 years thereafter.

1. Definitions

‘Foreign firm or institution’ means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

‘Know-how’ means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

‘Technology’ means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

2. General. The parties agree that research findings and technology developments testing strategy for mixed signal modules may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this agreement by foreign firms or institutions must be carefully controlled. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

3. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

a. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs 3.b., 3.c., and 3.d below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

- (1) sales of products or components, or
- (2) licenses of software or documentation related to sales of products or components, or
- (3) transfer to foreign subsidiaries of the recipient for purposes related to this agreement, or
- (4) transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.

b. The Seller shall provide timely notice to the Buyer or the Government of any proposed transfer from the Seller of technology developed with Government funding under this agreement to foreign firms or institutions. If it is determined that the transfer may have adverse consequences to the national security interests of the United States, the Seller, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the recipient.

c. In any event, the recipient shall provide written notice to the Buyer or the Government program manager of any proposed transfer to a foreign firm or institution at least 60 calendar days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty calendar days of receipt of the Seller’s written notification, the grants officer shall advise the Seller whether it consents to the proposed transfer. In cases where the Government does not concur or sixty calendar days after receipt and the

Government provides no decision, the Seller may utilize the procedures under the article entitled 'Disputes.' No transfer shall take place until a decision is rendered.

d. Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is approved by the Government, the Seller shall (a) refund to the Government the funds paid for the development of the technology and (b) negotiate a license with the Government to the technology under terms that are reasonable under the circumstances.

4. Lower Tier Agreements. The Seller shall include this article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work."

D. The following provision applies if Government-Furnished Property or Equipment is provided under this contract:

GOVERNMENT-FURNISHED PROPERTY/EQUIPMENT (GFP/GFE)

1. The GFP/GFE set forth in this contract, if any, will be provided to the recipient on a rent-free, non-interference basis for use during performance of this contract:

2. Upon completion or termination of this agreement, the Seller will obtain disposition instructions from the Buyer. The Seller shall submit inventory schedules covering all items of Government property not consumed in performing this Contract or delivered to the Buyer.

3. The Government shall retain title to all Government-Furnished Property/Equipment.

4. The Government-Furnished Property shall be used only for performing this Contract, unless otherwise approved by the Buyer.

5. The Seller shall be responsible and accountable for all Government property provided under this Contract. The Seller shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice.

6. The Buyer and the Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

7. The Seller shall not be liable for loss or destruction of, or damage to, the Government property provided under this Contract or for expenses incidental to such loss, destruction, or damage except as provided below:

a. The Seller shall be responsible for loss or destruction of, or damage to, the Government property --

(1) That results from willful misconduct or lack of good faith on the part of the Seller's managerial personnel, or

(2) That results from a failure on the part of the Seller, due to willful misconduct or lack of good faith on the part of the Seller's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property, or

b. If the Seller transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Seller for loss or destruction of, or damage to, the property as set forth above.