

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

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F30603-03-C-2009

- (a) The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for otherwise elsewhere in this contract, the only FAR clauses applicable to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1, are the clauses listed in FAR 52.244-6 [see subparagraph (38) below]. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.
- (1) 52.203-7 Anti-Kickback Procedures (JUL 1995) [excluding subparagraph (c)(1)]. This clause applies only if this contract exceeds \$100,000. Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract.
 - (2) 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997). This clause applies to this contract if Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. Seller shall indemnify Buyer for any and all losses suffered by Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.
 - (3) 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold or recover from Seller the amount of the reduction.
 - (4) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.
 - (5) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997). This clause applies only if this contract exceeds \$100,000. Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Buyer) directly to the PCO for the prime contract. Buyer will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."
 - (6) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)
 - (7) 52.215-2 Audit and Records -- Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types; (ii) Seller was

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required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

- (8) 52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000. 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."
- (9) 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000. 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 "The Boeing Company or any of its wholly owned subsidiaries."
- (10) 52.215-14 Integrity of Unit Prices (OCT 1997)
- (11) 52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
- (12) 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
- (13) 52.215-19 Notification of Ownership Changes (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
- (14) 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997). This clause

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applies only if this contract exceeds \$550,000. "Contracting Officer" shall mean Buyer in subparagraph (a).

- (15) 52.219-8 Utilization of Small Business Concerns (OCT 2000)
- (16) 52.219-9 Small Business Subcontracting Plan (JAN 2002). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer.
- (17) 52.222-1 Notice to the Government of Labor Disputes (FEB 1997). "Contracting Officer" shall mean Buyer.
- (18) 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- (19) 52.222-26 Equal Opportunity (APR 2002) [subparagraphs (b)(1) through (11)]
- (20) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.
- (21) 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$10,000.
- (22) 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.
- (23) 52.223-3 Hazardous Material Identification and Material Safety Data Jan 1997 Alternate I – Jul 1995
- (24) 52.223-14 Toxic Chemical Release Reporting (OCT 2000) [excluding paragraph (e)]. This clause applies only if this contract was competitively awarded, exceeds \$100,000 (including all options), is not for commercial items as defined in FAR Part 12 and Seller has a SIC designation of major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33.
- (25) 52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000)
- (26) 52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)
- (27) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
- (28) 52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 84). This clause applies only if this contract will involve access to classified information.

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- (29) 52.227-11 Patent Rights – Retention by the Contractor (Short Form) (JUN 1997). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business or nonprofit organization.
 - (30) 52.227-12 Patent Rights – Retention by the Contractor (Long Form) (JAN 1997). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business or nonprofit organization.
 - (31) 52.227-14 Rights in Data -- General (JUN 1987) and Alternates II, III, and V (JUN 1987) This clause applies only if data will be produced, furnished, or acquired under this contract.
 - (32) 52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if this contract involves experimental, developmental, research, or demonstration work.
 - (33) 52.230-6 Administration of Cost Accounting Standards (NOV 1999). This clause applies only if this contract incorporates clause 3050 or 3051.
 - (34) 52.234-1 Industrial Resource Development (DEC 1994)
 - (35) 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if this contract requires work on a Government installation.
 - (36) 52.242-15 Stop-Work Order (Aug 1989) Alternate I Apr 1984
 - (37) 52.244-5 Competition in Subcontracting – Dec 1996
 - (38) 52.244-6 Subcontracts for Commercial Items (DEC 2001)
 - (39) 52.245-18 Special Test Equipment (FEB 1993)
 - (34) 52.247-63 Preference for U.S. – Flag Air Carriers (JAN 1997). This clause applies only if this contract may involve international air transportation.
- (b) Cost Accounting Standards
- (1) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause 3050 is the version dated April 1998.
 - (2) The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3051 is the version dated April 1998.
- (c) Foreign Nationals - Foreign Sources

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- (1) For the purposes of this clause,
 - (A) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;
 - (B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
 - (C) Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.
 - (2) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.
 - (3) Seller acknowledges that equipment and technical data generated or delivered in the performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered in performance of this contract (see 22 CFR Section 125). Seller agrees to notify and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign nationals or their representatives. This notification will include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).
- (d) Export-Controlled Data Restrictions
- (1) For the purpose of this clause,
 - (A) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;
 - (B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
 - (C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

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- (2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.
- (3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.
- (4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

(e) Unusually Hazardous Risk Coverage

The parties agree to continue a dialogue regarding unusually hazardous risk coverage and to seek to define and clarify coverage appropriate under this contract through test and mission operations.

(f) Property Administration and Control

The contractor shall maintain adequate property control procedures, records, and a system of identification for all Government property accountable to this contract in accordance with FAR Part 45

(g) Late Delivery

When the Contractor encounters difficulty in meeting performance requirements, or anticipates difficulty in complying with the contract delivery schedule or date, it shall immediately notify the Boeing Subcontracts Administrator in writing giving pertinent details to be transmitted after review to the customer.

(h) Foreign Ownership, Control or Influence Sep 2002

The Government intends to secure services or equipment from firms which are not under foreign ownership, control or influence (FOCI). Offerors are required to request, collect and forward to the Government the Standard Form (SF) 328, certificate Pertaining to Foreign Interests from all

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Subcontractors undertaking classified work under the Offeror's direction and control.

(i) Commercial Off the Shelf (COTS) Software Rights

Notwithstanding any other provisions of this contract, in the event the terms of this contract require the delivery of software under this contract that is a "commercial item, as that term is defined in 48 C.F.R. 227.702-1 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (Sep 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire such commercial software licenses with only those rights set forth therein. The licensed commercial software (including related documentation is provided to the U.S. Government End Users (i) only as a commercial end item; and (ii) only pursuant to this Agreement.

(j) Intention to Use Consultants – Aug 1996

The Government intends to utilize the services of nongovernmental engineering organizations in technical, advisory and consulting roles for overall technical review of the activities covered by this contract. Although the consultants shall not have the right of technical direction, they shall from time to time and on a frequent basis attend technical reviews, participate in technical interchange meetings, observe national processing, witness fabrication and assembly, and monitor testing within the Contractor and Subcontractor facilities. The consultants will this require access to program-related Contractor facilities and documentation. Contractor proprietary data shall not be made available to consultants unless and until a protection agreement has been generated between the consultant and the Contractor and evidence of such agreement made available to the Government.

(k) Technical Data or Computer Software Previously Delivered to the Government

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract.