

**CUSTOMER CONTRACT REQUIREMENTS
CANADIAN F-18 MODERNIZATION PROGRAM ECP583 R2 (IWA 46092)
PRIME CONTRACT W8475-4-AL01/01-BB**

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31.

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

A. LABOR AND HEALTH CONDITIONS

1. The Seller shall comply with all laws applicable to the performance of the Work or any part thereof including, without limitation, all laws concerning health and labor conditions and the protection of the environment.
2. For the Work under this Contract or any Subcontract which is to be performed in Canada, the Seller shall employ labor, if available and reasonably practicable, from the locality where the Work is being carried out.

B. ASSIGNMENT AND SUBCONTRACTING

1. The Seller shall, through the Buyer, obtain the consent of the Canadian Government Minister in writing prior to Subcontracting or permitting the Subcontracting of any portion of the Work at any tier. The Canadian Government shall not unreasonably withhold consent.
2. Notwithstanding paragraph 1. above, the Seller may, without prior consent of the Canadian Government:
 - a. purchase "off-the-shelf" items and software and such standard articles and materials as are ordinarily produced by manufacturers in the normal course of business;
 - b. Subcontract for the provision of such incidental services as might ordinarily be subcontracted in performing the Work;
 - c. in addition to purchases and services referred to in paragraphs (a) and (b), subcontract any part or parts of the Work to one or more subcontractors up to a total value in the aggregate of five percent of the Contract Price; and
 - d. permit its subcontractors at any tier to make purchases or subcontract as permitted in paragraphs (a), (b) and (c).

A Subcontract at any tier may not be let without consent, under paragraph (b), (c) or (d), where a Subcontractor would obtain title to intellectual property developed as part of the Work.

3. In any Subcontract other than a Subcontract referred to in paragraph 2. a. above, the Seller shall, unless the Canadian Government otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions compatible with and, in the opinion of the Canadian Government, not less favorable to Canada than the terms and conditions set forth in the prime Contract. Deviations in any Subcontract from the terms of the Contract, including any right of termination of the Contract, shall be entirely at the risk of the Seller.

4. Any consent to a Subcontract shall not relieve the Seller from its obligations under the Contract or be construed as authorizing any liability on the part of Canada to a Subcontractor.

C. SECURITY

This Article only applies if this contract involves access to classified information and goods.

1. The Seller shall comply with the provisions of the Security Requirements Check List (SRCL) set forth in the prime contract (contact Buyer's Procurement Agent for copy).

2. All classified information and goods furnished to the Seller or produced by the Seller, shall be safeguarded as follows:

- a. the Seller shall not release the Classified information or goods to a government of a country other than Canada or the United States of America (USA), or to any person or organization in such a country, including any proposed subcontractor, without the prior written approval of the Canadian Government;
- b. the Seller shall safeguard the information and assets in accordance with the requirements of the government of the country in which the Work is performed, for information and goods which are classified at the equivalent level;
- c. the Seller shall not use the information and goods for any purpose other than the performance of the Contract without the prior written approval of the Canadian Government; and
- d. such information and goods shall be released only to personnel who have a need-to-know for the performance of the Contract, and who have a security clearance granted by the national security authority (being the Industrial Security Division (ISD) of Canadian PWGSC or the appropriate industrial security authority of the USA), at a level appropriate to the classification of the information/assets.

3. Classified information and goods shall only be transferred internationally through Government-to-Government channels or as specified in writing by the national security authority;

4. The national security authority shall mark information and goods received from the Government of Canada with its equivalent security classification;

5. The appropriate security classification to all information and goods produced by the Seller under this Contract shall be assigned by the Seller's Security Officer.

6. The Seller shall immediately report to the national security authority all cases in which it is known or there is reason to believe that Classified information and goods furnished to or produced by the Seller pursuant to this Contract have been lost or disclosed to unauthorized persons.

7. Upon completion of the Work, the Seller shall return to the Government of Canada, via government-to-government channels, all Classified information and goods furnished to or produced by the Seller pursuant to this Contract, including all Classified information and goods released to or produced by its subcontractors.

8. The following is a Canada/USA Classification equivalency chart:

CANADA	USA
NO EQUIVALENT (WILL BE TREATED AS PROTECTED "A" WHILE IN CANADA)	(FOR OFFICIAL USE ONLY)
PROTECTED "A" PROTECTED "B"	NO EQUIVALENT (WILL BE TREATED AS CONFIDENTIAL WHILE IN U.S.)

PROTECTED "C"

NO EQUIVALENT
(SPECIAL INSTRUCTIONS
REQUIRED)

9. The above paragraphs shall be inserted mutatis mutandis in all subcontracts that involve access to Classified information and goods.

D. LIABILITY LIMITATION

1. WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY OF THE WORK OR THE DELIVERABLES FOLLOWING FINAL ACCEPTANCE BY CANADA, THE WARRANTIES, CONDITIONS, REPRESENTATIONS, OBLIGATIONS, AND LIABILITIES OF THE CONTRACTOR AND THE REMEDIES OF CANADA SET FORTH IN THE CONTRACT ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND CANADA HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES AND OTHER OBLIGATIONS AND LIABILITIES OF THE CONTRACTOR, AND ANY OTHER RIGHTS, CLAIMS, AND REMEDIES OF CANADA AGAINST THE CONTRACTOR, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE INCLUDING BUT NOT LIMITED TO:

- a. ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS;
- b. ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE;
- c. ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF THE CONTRACTOR; AND
- d. ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY PROPERTY OF CANADA, INCLUDING WITHOUT LIMITATION THE AIRCRAFT OR ANY OTHER DELIVERABLES.

2. THE CONTRACTOR SHALL HAVE NO OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF THE CONTRACTOR), OR OTHERWISE, FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY AIRCRAFT OR OTHER DELIVERABLE.

3. Claims by Canada against the Contractor for contribution toward third party bodily injury or property damage claims, to the extent of the Contractor's relative percentage of the total fault or other legal responsibility of all persons causing such bodily injuries or property damage, are excepted from the terms of this Article D.

4. For the purpose of this section, "the Contractor" includes The Boeing Company, its divisions, subsidiaries (including McDonnell Douglas Corporation, a wholly owned subsidiary of The Boeing Company), the assignees of each, subcontractors, suppliers and affiliates, and their respective directors, officers, employees and agents.

5. Canada and the contractor agree that this Article has been the subject of discussion and negotiation and is fully understood by the parties, and that the goods and services and the other mutual agreements of the parties set for in this contract were arrived at in consideration of each of such provision, specifically including this Subarticle.

E. INTELLECTUAL PROPERTY RIGHTS

1. Interpretation

a. In the Contract,

"Background Information" means all Technical Information that is not Foreground Information and that is proprietary to or the confidential information of the Seller, its Subcontractors or any other supplier of the Seller;

“Best Endeavors” means doing in good faith all that can be reasonably be done in the circumstances.

“Firmware” means any computer program stored in integrated circuits, read-only memory or other similar devices;

“Firmware” means any computer programs stored in integrated circuit, read-only memory or similar devices;

"Foreground Information" means any Invention first conceived, developed or reduced to practice as part of the Work under the Contract and all other Technical Information conceived, developed or produced as part of the Work under the Contract;

"Intellectual Property Right" means any intellectual property right recognized by the law, including any intellectual property right protected through legislation (such as that governing patents, copyright, industrial design, or integrated circuit topography) or arising from protection of information as a trade secret or as confidential information;

“Invention” means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, whether or not patentable;

"Software" means any computer program whether in source or object code (including Firmware), any computer program documentation recorded in any form or upon any medium, and any computer database, and includes modifications to any of the foregoing;

"Technical Information" means all information of a scientific, technical, or artistic nature relating to the Work, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited to any Inventions, designs, methods, processes, techniques, know-how, models, prototypes, patterns, samples, schematics, experimental or test data, reports, drawings, plans, specifications, photographs, collections of information, manuals and any other documents, and Software. Technical Information does not include data concerned with the administration of the Contract by Canada or the Seller, such as internal financial or management information, unless it is a deliverable under the Contract.

2. Disclosure of Foreground Information

a. The Seller shall promptly report and fully disclose to the Canadian Government all Foreground Information that could be Inventions, and shall report and fully disclose to the Canadian Government all other Foreground Information not later than the time of completion of the Work or such earlier time as mutually agreed.

b. The Seller shall, in each disclosure under this section, indicate the names of all Subcontractors at any tier, if any, in which Intellectual Property Rights to any Foreground Information have vested or will vest.

c. Before and until thirty six (36) months following completion of the Work the Canadian Government, through DCMA, shall have the right to examine all relevant records and supporting data of the Seller which the Canadian Government reasonably deems pertinent to the identification of Foreground Information

3. Ownership of Intellectual Property Rights in Foreground Information

Subject to paragraph 7. below (Transfer of Intellectual Property Rights in Foreground Information), and without affecting any Intellectual Property Rights or interests therein that have come into being prior to the Contract or that relate to information or data supplied by Canada for purposes of the Contract, all Intellectual Property Rights in the Foreground Information shall immediately, as soon as they come into existence, vest in and remain the property of the Seller or Subcontractors, as applicable.

4. Deliverables

Notwithstanding the Seller's and Subcontractor's ownership of the Intellectual Property Rights in Foreground Information that is embodied in a prototype, model or custom or customized system or equipment Deliverable, together with associated manuals and other operating and maintenance documents and tools that are Deliverables, Canada shall have unrestricted ownership rights in those Deliverables, including the right to make them available for public use, whether for a fee or otherwise, and, except in the case of Software that is not necessary for the operation of the prototype, model or system or equipment, and subject to the Export Control Laws of the United States, the right to sell them.

5. License to Intellectual Property Rights in Foreground Information

a. Subject to the Export Control Laws of the United States, in consideration of Canada's contribution to the cost of development of the Foreground Information, the Seller hereby grants to Canada a non exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise all Intellectual Property Rights in the Foreground Information that is subject to disclosure under paragraph 2 above and that vests in the Seller or Subcontractor pursuant to paragraph 3 above, for support of the CF-18 aircraft program.

b. Canada may wish to award contracts for the purpose contemplated in paragraph 5.a. and such contract awards may follow a competitive process. Canada's license in relation to the Intellectual Property Rights in the Foreground Information that vests in the Seller or Subcontractor pursuant to paragraph 3. above includes the right to disclose the Foreground Information to bidders for such contracts, and to sub-license or otherwise authorize the use of that information by any Seller engaged by Canada solely for the purpose of carrying out such a contract. Such disclosure shall not occur until Canada and the bidder or the Seller have executed non-disclosure agreements which are at least as restrictive as this Article. However, provision of such Foreground Information to any subcontractor of such bidder or Seller shall require approval of the Seller which shall not be unreasonably withheld.

c. Where the Intellectual Property Rights in any Foreground Information are or will be owned by a Subcontractor at any tier, the Seller shall use best endeavors to either obtain or assist in arranging for a license from that Subcontractor that permits compliance with paragraphs 5.a. and 5.b.

6. License to Intellectual Property Rights in Background Information

a. Subject to the Export Control Laws of the United States, the Seller hereby grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license, with right to sublicense to:

- (i) an individual or 3rd party contractor, to exercise such of the Intellectual Property Rights in any Background Information incorporated into the CF-18 Maintenance Regenerative Training courseware as may be required to support continuing CF-18 Weapon System regenerative training requirements; and
- (ii) Canada's CF-18 System Engineering Support (SES) Contractor, to exercise such of the Intellectual Property Rights in any Background Information incorporated into the Work or necessary for the performance of the Work as may be required for the use, operation, maintenance, repair or overhaul of the Work in support of the CF-18 Aircraft, and such Background Information is, upon request and to the extent necessary to provide at least the same level of support to the Aircraft after implementation of ECP 583 as before, subject to disclosure to Canada's SES Contractor at no cost other than reasonable reproduction and administrative costs incurred in providing the Background Information. The range and depth of such disclosure shall be consistent with the historical provision of data provided by the Seller to Canada's SES Contractor.

b. In the event the Seller is unable or unwilling to carry out the maintenance, repair or overhaul or provide spare parts for the equipment Deliverables on reasonable commercial terms and within reasonable delivery times, the Seller agrees to grant a fully paid, royalty free, non-exclusive,

irrevocable license to manufacture or have manufactured such spare parts to maintain the equipment Deliverables in effective operation, and to provide such Background Information as it possesses which may be necessary to manufacture such spare parts, all at no cost other than the Seller's reasonable reproduction and administrative costs incurred in making such Background Information available, all subject to the Export Control Laws of the United States.

c. Any contracts awarded by Canada to third-party contractors for any of the purposes contemplated by paragraphs 6.a. and 6.b. may follow a competitive process. Canada's license in relation to the Intellectual Property Rights in Background Information includes the right, subject to the Export Control Laws of the United States, to disclose the Background Information to bidders for such contracts, and to sub-license or otherwise authorize the use of that information by any Seller engaged by Canada solely for the purpose of carrying out such a contract. Such disclosure shall not occur until Canada and the bidders and the Seller have executed non-disclosure agreements which are at least as restrictive as this Article. However, provision of such Background Information to any subcontractor of said bidders and the Seller shall require approval of the Seller which shall not be unreasonably withheld.

d. Where the Intellectual Property Rights in any Background Information are owned by a Subcontractor at any tier, the Seller shall use its best endeavors to either obtain or assist in arranging for a license from that Subcontractor that permits compliance with paragraphs 6.a., 6.b. and 6.c., and to obtain the necessary Background Information for the use of Canada for the support of the CF-18 Aircraft.

7. Sale, Assignment, Transfer or Licensing of Intellectual Property Rights in Foreground Information

- a. In any sale, assignment, transfer or license of Intellectual Property Rights in Foreground Information by the Seller except a sale or license for end use of a product based on Foreground Information, the Seller shall impose on the other party all of its obligations to Canada in relation to the Intellectual Property Rights in the Foreground Information and any restrictions set out in the Contract on the use or disposition of the Intellectual Property Rights in the Foreground Information (and, if applicable, the Foreground Information), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee.
- b. The Seller shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee referred to in paragraph 7.a., and shall ensure that such party is required to do the same with regard to any subsequent transferee, assignee or licensee.
- c. The Seller shall not charge or permit any person to charge a royalty or other fee to Canada in respect of the Intellectual Property Rights in any Foreground Information for purposes of a contract or other arrangement with Canada.

8. Access to Information; Exception to Seller Rights

a. Subject to the whole of the Access to Information Act, R.S.C., c. A-1, (including, without derogating from the foregoing, sections 20 & 27 thereof), and to any right of Canada under the Contract, Canada shall not release or disclose outside the Government of Canada any information delivered to Canada under the Contract that is confidential information or a trade secret of the Seller or a Subcontractor. Accordingly, the parties hereby stipulate that all Technical Data delivered under this Contract which is marked proprietary to the Seller or its Subcontractors shall be treated as confidential information or a trade secret of the Seller or Subcontractor.

b. Neither Party shall, without the written consent of the other, either during or after the performance of the Work, use other than as permitted by the Contract any information or data created, developed, produced or otherwise obtained in the course of the Work required hereunder, or any information contained in reports, drawings, documents, or other records furnished for contractual purposes by one Party to the other.

c. Notwithstanding paragraph 8.a., nothing in these terms and conditions shall be construed as limiting

Canada's right to exercise the Intellectual Property Rights in any Foreground Information or any Background Information, or to disclose any Foreground Information or any Background Information, to the extent that such information:

- (1) is or becomes in the public domain;
- (2) is or becomes known to Canada from a source other than the Seller, except from any source that is known to Canada to be under an obligation to the Seller not to disclose the information;
- (3) is independently developed by or for Canada; or
- (4) is disclosed under compulsion of a legislative requirement or any order of a court or other tribunal having jurisdiction.

9. Further Provisions Regarding Certain Technical Data

- a. With regard to the Seller and L-3 Communication MAS (Canada), Canada's SES Contractor:
 - (1) respecting (i) future ECPs procured from either the Seller or the US Government by Canada for its CF-18 Aircraft and (ii) DND proposed modifications to Canada's CF-18 Aircraft which are in the nature of engineering change proposals, the Seller shall, upon request and to the extent necessary to provide at least the same level of support to the Aircraft after implementation of such ECPs as before, disclose technical data to Canada's SES Contractor at no cost other than reasonable reproduction and administrative costs incurred in providing the technical data. The range and depth of such technical data shall be consistent with the historical provision of technical data provided by the Seller to Canada's SES Contractor and shall not require the Seller to create or develop technical data beyond what it may be under separate contract to so create or develop.
 - (2) where such technical data is owned by a Subcontractor at any tier, the Seller shall use its best endeavors to either obtain or assist in arranging from that Subcontractor the release of the technical data that permits compliance with paragraph 9.a.(1).

F PROGRESS REVIEWS, MEETINGS AND VISITS

Where reasonably required by the Canadian Government, the Seller shall ensure that representatives of the Seller are available to attend Project Review meetings, and in case of the below listed subcontractors, shall upon request arrange for representatives of the Canadian Government to visit the Seller's premises. In the event of such visit, the Seller shall be entitled to participate, and the Canadian Government agrees that its representatives shall comply with any safety or security requirements, or any other reasonable code of behavior the Seller.

1. L-3 Communications MAS (Canada) Inc.
Montreal International Airport, Mirabel
10,000 Cargo A-4 Street
Mirabel, Quebec
J7N 1H3
2. TEAC Aerospace Technologies, Inc.
1724 Gage Road
Montebello, CA 90640-6504
3. Northrop Grumman Corp.
Integrated systems & Aerostructures
One Hornet Way
El Segundo, CA 90245-2804
4. Raytheon Canada Limited
Calgary Electronic Facility
919 72nd Avenue, Northeast
Calgary Alberta T2E8N9

5. Elbit Systems Limited/Kaiser Aerospace
641 River Oaks Parkway
San Jose, CA 95134
6. Patriot Machine Inc.
P.O. Box 1530
St. Charles, MO 63302-1530
7. Austin Machine Company
804 Texas Court
O'Fallon, MO 63366
8. RS Microwave Company, Inc.
P.O. Box 273-22 Park Place
Butler, NJ 07405-0273
9. Reynolds Industries, Inc.
P.O. Box 92062
Los Angeles, CA 90009-2062
10. Honeywell International Inc.
P.O. Box 22000
Tempe, AZ 85285
11. Esterline Mason
13955 Balboa Boulevard
Sylmar, CA 91342
12. L-3 Electronic Systems, Inc.
25 City View Drive
Toronto, Ontario
Canada, M9W 5A7

G. PRIORITY RATING

1. Canada is a participant in the U.S. Defense Priorities and Allocations system and this defense contract is eligible for a Priority Rating. The Public Works and Government Services Canada Priorities and Allocations Officer, shall advise the Contractor as to the appropriate Priority Rating within 60 days of the date of this Contract.
2. The Seller shall include the assigned Priority Rating in further subcontracts at any tier.

H. AUTHORITIES AND DESIGNATIONS

1. The Technical Authority is the CF18A/B Incremental Modernization Project Manager at National Defence Headquarters, Ottawa, Canada K1A 0K2; Telephone (613) 993-3606. The Technical Authority is responsible for all technical matters pertaining to the contract.
2. The Quality Assurance Authority is the Director General, Equipment Program Services, National Defence Headquarters, Ottawa, Ontario, Canada K1A 0K2, Telephone (819) 994-9043. The Quality Assurance Authority is responsible for quality matters pertaining to the Contract as well as performing Government Quality Assurance at the Contractor's facilities and its subcontractors.

I. QUALITY ASSURANCE

1. In the performance of the Work described herein, the Seller shall comply with the requirements of “ISO 9001:2000 Quality Management systems – Requirements” published by the International Organization for Standardization (ISO), current edition as of 1 July 2004.

Note: It is not the intent of this clause that the Seller be registered to the applicable standard' however, the Seller's quality management system must address each requirement contained in the standard.

2. All Work shall be subject to Government Quality Assurance (GQA), (also known as Government Source Inspection), at the Seller's facility, or that of the subcontractor(s) by the Quality Assurance Authority named in Section H above or by his designated Quality Assurance Representative, hereby after referred to as the QAR. The Seller shall provide for the applicability of GQA in the purchasing documents with its subcontractors and forward copies to the QAR, together with such relevant technical data as the QAR may reasonably request.
3. If the Seller has not been contacted by the Agency/QAR performing GQA in the Seller's facility or area within forty-five (45) working days of the effective date of the Contract, the Seller shall notify the Contracting Authority.
4. The Seller shall provide the QAR with the accommodation and facilities required for the proper accomplishment of Government Quality Assurance (GQA) and shall provide any assistance required by the QAR for evaluation, verification, validation, documentation or release of product.
5. The Seller shall notify the QAR of any non-conforming goods received from a subcontractor when those goods have been subject to GQA.
6. The Seller shall provide all applicable test and technical data, test pieces and samples as may reasonably be required by the QAR to verify conformance to Contract requirements.

J. INSPECTION

Source 1. All work shall be subject to Government Quality Assurance (GQA), (also known as Government Inspection), by the Quality Assurance Authority in accordance with the Contract prior to acceptance. The Quality Assurance Authority and the Technical Authority may, at any reasonable time and from time to time:

- a) have access to the Work and to any premises where any Work is being carried out at the Seller's or its subcontractor's facilities; and
- b) witness qualification tests and review qualification test reports.

K. INSURANCE

1. Throughout the period when Work is performed and until final acceptance by Canada, the Seller shall carry and maintain, and ensure that all major Subcontractors carry and maintain, Commercial General Liability insurance with available limits of not less than Twenty-five Million Dollars (25,000,000) per occurrence, for bodily injury and property damage combined arising out of the Seller or Subcontractors negligence or willful misconduct and the Seller shall name Canada as an additional insured under this insurance policy.